SENATE—*Tuesday, October 29, 1991*

The Senate met at 9:15 a.m., and was called to order by the Honorable WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Lo, children are an heritage of the Lord: and the fruit of the womb is his reward.—Psalm 127:3.

God of our fathers, make real to us the wonderful promise with which the Old Testament ends, "And he shall turn the heart of the fathers to the children, and the heart of the children to their fathers, lest I come and smite the earth with a curse."—Malachi 4:6. And give us ears to hear the prospect of the curse which accompanies alienation of fathers from their children, lest children become our most "endangered species."

Where are we as a society, Lord, when the words "unwanted children" have become acceptable to our thinking? Is there something in our subconscious which would view children as a liability rather than an asset? Could such a subliminal attitude be the cause of increasing child abuse? Does it explain the tragedy of teenage anarchy, alcoholism, drugs, violence, sexual promiscuity, and suicide? Is there a curse upon our culture with its "unwanted children" syndrome? Omniscient God, give to the Senators special wisdom to lead our Nation to right thinking rather than represent a society whose ways precipitate a curse.

In the name of Jesus who said, "* * * Suffer the little children to come unto me, and forbid them not: for of such is the kingdom of God."—Mark 10:14.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 29, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. FORD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader.

THE SCHEDULE

Mr. MITCHELL. Mr. President, there will be a brief period for morning business this morning, following which it is my hope that we can begin to take up the civil rights bill and proceed to consider, debate, and vote on whatever amendments are to be proposed to that bill. This is a matter of importance, one which has been under consideration here in the Senate for a very long time, and I hope we can press forward and complete action on that bill as soon as possible by the end of the business day today, if that is possible.

I encourage all Senators who intend to offer amendments to be prepared to do so today during the day and not to wait until later this evening, in which event we will end up here very late this evening when we could of course be transacting business during the day.

So I encourage my colleagues to be present, to be prepared to proceed, and I look forward to completing action on this important measure hopefully today, if that is possible.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time. I reserve all the leader time of the distinguished Republican leader.

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for the transaction of morning business not to extend beyond the hour of 9:30 a.m., with Senators permitted to speak therein for up to 5 minutes each.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPPORT FOR DEMOCRACY IN KENYA

Mr. DECONCINI. Mr. President, while nations throughout Africa are moving to adapt democratic systems of government, Kenya's President Moi continues to stifle all forms of political dissent. Last week, Moi declared total war on courageous Kenyans who continue to speak out against his dictatorial and corrupt regime, and vowed to crush like rats anyone attending a demonstration advocating political pluralism.

Mr. Moi's cronies in the parliament have been equally contemptuous of dissent. One minister told a public meeting that multiparty politics would be like "sorcery and the government will not allow children to be bewitched." He added, "We will use rungus [clubs] if this will be the effective way of ending talk about multiparty politics."

Mr. President, the shrill rhetoric of President Moi and his supporters sounds more and more desperate as the injustices of his strict one-party rule become ever more evident to Kenyans. Since the fall of communism in Eastern Europe, one-party governments in 16 sub-Saharan nations have been ousted by prodemocracy movements. And where Kenya once stood as a model of economic and political stability, today there is a danger that it might become a symbol of obsolete African dictatorships which struggle to retain power and wealth at the expense of the entire nation.

Mr. President, I believe it is time that the United States firmly demonstrate its support for democracy in Kenya by immediately cutting aid to Mr. Moi's government.

If we are to encourage the prodemocracy movement in Kenya, United States aid must be withdrawn and linked to human rights concerns. Leaders of the Kenyan democracy movement have told me that an aid cutoff would provide Kenyans with a psychological lift. If the United States is to truly establish itself as a prodemocratic force in the new world order, then Kenya is one country where such a moral policy should be employed.

RESOLUTION OF REFUSENIK CASES

Mr. DECONCINI. Mr. President, I wish to briefly bring to the attention of my colleagues my growing concern regarding the resolution of outstanding Soviet refusenik cases.

I recently returned from a trip to the former Soviet Union where I attended the opening of the Moscow human rights meeting and met with a number of Russian and union officials. Helsinki Commission Chairman, STENY HOYER and I repeatedly expressed our concern

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

that all refusenik cases should be resolved during the Moscow meeting. And yet, few, if any, of the more than 100 refusenik cases have been resolved since the Moscow human rights meeting took place between September 10 and October 4. In fact, a few refuseniks even received new refusals during the course of this meeting. This, Mr. President, is cold war cynicism at its worst, and we need to see improvements.

The coalition government currently in place in Moscow simply has no excuse to delay resolution of these cases. President Gorbachev has demonstrated in the past that he can expedite action on these cases within days if he so chooses. But he apparently has not changed his policy with respect to the arbitrary and cruel denial of the basic right of freedom of movement. And, what are we to make of President Yeltsin's commitment to human rights or his political ability to influence the central authorities regarding this issue? He regrettably remained silent during the Moscow meeting. Someone who wants to make changes in that country should certainly come forward to address the 100 human rights violation cases.

But the U.S. Congress must not remain silent. We must not forget those like Dimitri Berman and Vasily Barats whose right to emigrate is still being flagrantly abused by Soviet and Russian authorities alike. Both have kept them from getting visas to leave that country.

Union authorities have agreed to dissolve the KGB and restructure their security apparatus under a more democratic and accountable system. With the elimination of the institutional barrier of the KGB and the professed commitment at the union and the republic level to the principles of Helsinki why, we must ask, can the refuseniks not leave? If now is not the time to accord the citizens of the former Soviet Union their fundamental freedoms, when will the time come? I urge my colleagues to speak out forcefully against this continuing abuse.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,418th day that Terry Anderson has been held captive in Lebanon.

On October 23, the Committee to Protect Journalists honored Bill Foley and Cary Vaughan, founders of the Journalists Committee to Free Terry Anderson, for their efforts on behalf of Terry Anderson. Foley and Vaughan were among seven to receive the Press Freedom awards.

Mr. President, I ask unanimous consent that the Associated Press article reporting the important contributions each recipient made toward achieving international respect for an independent press be printed in the RECORD at this time.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JOURNALISTS HONORED FOR CHAMPIONING PRESS FREEDOM

NEW YORK.—Two journalists who have worked to free American hostage Terry Anderson were among seven people who received Press Freedom awards for furthering the cause of press independence worldwide.

The awards were given Oct. 23 by the Committee to Protect Journalists, a New York-based organization dedicated to defending journalists and publicizing violations of press freedom.

Bill Foley and Cary Vaughan, founders of the Journalists Committee to Free Terry Anderson, were honored for their lobbying efforts on behalf of Anderson, the chief Middle East correspondent for The Associated Press, who was kidnapped six years ago in Beirut.

Two Chinese journalists, Chen Ziming and Wang Juntao, were honored in absentia. Both are in a Beijing prison on charges of "counterrevolutionary propaganda and incitement." The two published Economics Weekly, a reformist journal that was shut down in the aftermath of the Chinese government's crackdown against students protesting in Tiananmen Square.

Tatyana Mitkova, a former anchorwoman for the Soviet news program "TSN," was given the award for refusing in January to read a script handed to her by a state broadcasting agency official.

Byron Barrera, publisher of several Guatemalan newspapers, was honored for his long-term efforts to broaden the perspective of that Central American country's media.

Pius Njawe received the award for standing up to Cameroon's government, which harassed him for printing an editorial against the lack of freedom of expression in his African nation.

Former CBS newsman Walter Cronkite received the Burton Benjamin Memorial Award for his longtime advocacy of international press freedom.

TRIBUTE TO CARL BAILEY

Mr. HEFLIN. Mr. President, it is a pleasure for me to pay tribute today to the life and career of my close friend, Carl Franklin Bailey, a businessman and civic leader of the highest caliber. Carl stepped down as the president and chief executive officer of South Central Bell, a subsidiary of the BellSouth Corp., on October 31. In a career that spanned nearly 40 years, Carl advanced from an entry-level "Ma Bell" position to South Central Bell's helm, where he served with distinction for 9 years.

Some of my colleagues probably remember Carl from his association with the U.S. Telephone Association [USTA], of which he served as chairman during 1987–88. During his 1-year term as chairman, Carl focused on the fact that the U.S. phone system is the best in the world, and perpetuated continued excellence in communication services. He parlayed the industry's grassroots support and provision of a universally available, quality product into enhanced credibility on Capitol Hill.

Carl Bailey's career at South Central Bell was best characterized by change and innovation. He presided over the company during a time of unprecedented transformation in the telecommunications industry, AT&T's divestiture in 1984. Carl still refers to that split as the single biggest event in his career.

As evidence of his energetic spirit of innovation, Carl truly believed that business enterprises could positively impact upon and influence the public good. One such project, "Mississippi 2000," established plans for a fiber-optic-based, interactive distance learning network designed to enhance educational opportunities in Mississippi schools.

At the time of the program's unveiling, Gov. Ray Mabus described "Mississippi 2000" as a public/private partnership formed to boost education in the State of Mississippi and a significant undertaking on the Nation's educational frontier. Bailey called the program the result of South Central Bell's and Northern Telecom's mutual interest in education and economic development.

He said the basic idea behind distance learning with any technology is to expand educational opportunities to students in isolated, small, and disadvantaged schools. The technology allows instructors at Mississippi State University, Mississippi University for Women, or the Mississippi Educational Television Network Studio to simultaneously conduct classes in three or four rural secondary schools.

Other examples of Carl Bailey's vision of the partnership between the public and private sectors are found in a speech he gave at Symposium 1989, entitled "Developing Alabama's Potential in the Information Age." In the speech, Carl outlines several instances which support his contention that telecommunications is a vitally important economic development tool.

He described how South Dakota revamped its local laws and regulations to attract the credit industry; how firms such as L.L. Bean now operate 24 hours a day due to the reshaping of the wholesale-retail industry; and how colleges such as the University of Alabama in Huntsville are using computers in setting up statewide networks for universities and high-technology industry.

Carl went to discuss his theme of a new viewpoint on Alabama's economic future.

The topics picked for this symposium are very closely intertwined and for us to move Alabama successfully forward we must address them together. But if I had to choose one that we should do first, it would be the creation of the partnership among all parties. Without such a partnership, all the rest will be that much more difficult. With it, we can define where we are today, decide where we want to be tomorrow and move forward aggressively to place Alabama at the forefront of the Information Age.

Mr. President, to me, Carl Bailey has always stood out as the ideal of what business and public cooperation can accomplish in an increasingly complicated and diverse society. His strong leadership, dynamic vision, and tireless dedication to the telecommunications industry and goals of economic development will be sorely missed by all of us who know him and worked with him over the years. I am confident, however, that he leaves a legacy that will inspire others to continue his visionary quest.

I congratulate and commend my friend Carl Bailey on this outstanding career and many accomplishments, and extend my best to him and his family upon the occasion of his retirement. I ask unanimous consent that an article detailing Carl's career with South Central Bell be included in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Birmingham News, Aug. 23, 1991]

SOUTH CENTRAL BELL'S BAILEY RETIRING AFTER 9 YEARS AT HELM

(By Chris Roberts)

In nine years as president of South Central Bell, the constant in Carl Bailey's life has been change.

On Oct. 31, he will undergo one last change—his retirement.

Bailey, whose career blossomed from an entry-level Ma Bell job in 1952 to head of a company with 31,000 employees in five states since 1982, is retiring a few months before South Central Bell merges with several other BellSouth Corp. subsidiaries into BellSouth Telecommunications.

But organizational change has been nothing new for Bailey, who was president of South Central Bell a few years before AT&T's divestiture created seven regional telephone holding companies.

"When you are part of dynamic change . . . it creates excitement," Bailey said. "We have gone from a company that was regulated and had almost all of the business to one now that is still regulated more than we would like to be, but has moved to a competitive environment. That really get the creative juices flowing. If it doesn't, you're really not going to make it in the marketplace.

"I think we've been somewhat successful in dealing with things from a competitive standpoint."

The announcement of Bailey's retirement comes shortly after Hugh Jacks said he would retire as head of BellSouth Services. BellSouth said it was to announce successors to those and other jobs later today.

In a statement, BellSouth Chairman John Clendenin praised Bailey for his work.

"Carl Bailey is a business executive of great energy, ability and insight," Clendenin said. "His leadership in BellSouth and in the national telecommunications arena came at a time of monumental change, and he has gained the respect of the entire industry as an advocate, a trusted negotiator and an exceptional leader."

Bailey, a Birmingham native and Auburn University graduate, went to work for AT&T in New Orleans in 1952. He returned to the company after a 2½-year stint in the Army, and by 1968 was working at AT&T's federal relations office in Washington, DC.

He was named assistant to the president of South Central Bell in Birmingham in 1971. In 1972, he became general manager for the company's headquarters staff.

In 1977, he was named vice president of the company's Louisiana operations, and by 1980 he was back in Birmingham as South Central Bell's executive vice president for corporate affairs.

He was named president of South Central Bell in 1982. In 1987–88, he was chairman of the U.S. Telephone Association, the telephone industry's trade association.

AT&T was split in 1984 and South Central Bell became part of the BellSouth holding company.

The divestiture, Bailey said, was the single biggest event in his career.

The divestiture and competition has given consumers more choices and cheaper telecommunication prices, Bailey said, but it also has meant confusion in the marketplace since no single company has full responsibility for end-to-end calls.

Competition and changing economic conditions has meant that Bailey has led a shrinking company.

South Central Bell had 49,000 employees in 1983. It has 18,000 fewer now, and the company's latest early retirement program has seen another 1,100 employees in Alabama, Mississippi, Louisiana, Tennessee and Kentucky leave this year. About 450 are from Alabama.

"Our business is no different from most other businesses," Bailey said. "We have been able to take advantage of the technology to consolidate operations and do things more efficiently. We don't do some things we used to. We used to go out and install telephones in customers' homes, and we don't do that anymore. Competition has allowed us to lose business, but it has been minimal.

"All of those things have contributed to the downsizing, in addition to our ability to find ways to be more efficient. And you do that to give value to the customer."

None of those employees has been laid off, he emphasized.

"When you think of downsizing at a lot of large companies, you have to think about the economy," he said. "The impact in Birmingham is minimal. It doesn't have the impact of putting people on the streets.

"We're not going to have a mass exodus out of here. These are people who are in their 50s and above—and a few a little less than that—and they will have an income coming in."

Bailey's retirement is not part of the companywide retirement plan. He said he had decided in 1990 that he would retire this year.

"We spent a heck of a lot of time talking about succession in our business and determining who ought to be placed in our senior level of management," Bailey said. "We have done some positioning to get people in the right place with the right amount of experience to move in behind myself and Hugh Jacks."

After Halloween, Bailey said he plans to remain in Birmingham and do a little more golfing and hunting, play with a new grandchild and remain involved with civic and business activities.

He is on boards of directors for the Boy Scouts southeast region, South-Trust Corp., Delchamps Inc., Circle S Industries, Southern Research Institute and St. Vincent's and the Eye Foundation hospitals. He is past chairman of the Birmingham-Southern College board of trustees and is co-chairman of its $40 million 21st Century Campaign.

THE REAL QUESTION OF THE MIDDLE EAST PEACE CONFERENCE

Mr. DECONCINI. Mr. President, we stand here today on the eve of one of the most important milestones ever to occur in the Middle East. For the first time in 43 years, Arab governments committed to destroying the State of Israel will engage in direct, face-to-face negotiations with that lonely democracy. This historic occasion is designed to resolve one of the most persistent and perplexing conflicts the world has ever witnessed. The Middle East has for two long been the site of pernicious hostilities where governments conducted diplomacy with the force of the gun, not the peace of the tongue. With the cold war behind us, and our overwhelming victory in Iraq still fresh in everyone's mind, America has a golden opportunity to facilitate a real and comprehensive peace in this troubled region. All parties involved have a vested interest in negotiating an end to this bloody conflict. This Senator strongly encourages the governments of the Middle East to take full advantage of this truly historic opening.

President Bush and Secretary of State Baker should be commended for their delicate and diligent performance in convincing the Arabs and Israelis to sit down and talk. This tremendous accomplishment, in and of itself, concludes yet another chapter in the seemingly endless web of Arab-Israeli confrontations. But after closely following the Middle East during the 15 years I have been a member of this distinguished body, I recognize that there is only so much that America can do. It is the primary responsibility of the Israelis and Arabs to close this decades old horror novel.

As we enter the first stage of negotiations, let us all hope that we will see the parties involved be more forthcoming in offering compromise solutions than they were prior to the conference. The human and economic costs of a constant state of war are too serious to let petty politics get in the way of a comprehensive peace package. We recognize that the road ahead will be full of pitfalls and surprises—let us have no doubt about that. As we have seen in recent days, extremists on all sides have initiated yet another wave of violence aimed at disrupting the talks. More such acts will doubtlessly continue throughout the conference. I am equally confident that we will see the negotiations start and stop many times as the process moves forward.

What worries this Senator, Mr. President, is that George Bush has attempted to establish a timetable by which things are supposed to magically fall into place. The politics of the Middle East are too capricious for us to rely on such arbitrary schedules. The Jews have waited 2,000 years to escape repression—they should not be rushed

into an agreement just to meet a Western deadline. Israel deserves nothing less than a true peace. If it takes a little extra time to achieve it, this is one Senator who is prepared to wait.

While we certainly hope the Israelis and Palestinians can reach a just accord on Palestinian self-determination within 1 year, it must be accomplished under a framework guaranteeing Israel's very real security needs. To make peace truly successful, all parties must come forward with the same kind of bold leadership demonstrated by former Egyptian President Anwar Sadat. But we must not forget that even under the relatively sanguine environment at the time those negotiations began, it took 5 years and three interim agreements before a permanent peace was established. Given the importance of finding an enduring peace, one that will last long enough so that future generations in the region will become immune from the horrors of war, I must ask why there is this rush to conclude the Israeli-Palestinian negotiations on self-rule within 1 year, Mr. President? It is unwise for the United States to aggressively pursue an agreement on Palestinian self-determination if Arab governments remain intransigent toward the goal of real peace. If a 1-year timetable is good for the Palestinian-Israeli facet of negotiations, why not apply this same standard to the bilateral talks between the Arab governments and Israel?

Mr. President, the world yearns for real peace in the Middle East. Pseudo peace accords—void of agreements on the gamut of issues dividing Arabs and Israelis—will inevitably fail to bring harmony in that volatile region. Israel will find it very difficult to negotiate the comprehensive peace it so richly deserves if the Arabs intend to focus only on land. The phrase is "land for peace" and each term demands equal weight. Unfortunately for the innocent people caught up in this tragic game, it seems the Arabs only have the first part of this expression in mind as we enter into the conference.

Syria appears to be the leading proponent of this philosophy. There are some reports indicating Syria will intentionally stonewall the second stage of negotiations in hopes of pressuring Israel to make imprudent concessions. If they do this, Mr. President, I would urge my colleagues to publicly support Israel. There is no justification for the United States to remain "an honest broker" with Syria when that country asserts it is more interested in reclaiming the Golan Heights than establishing a real and comprehensive peace. In the eight trips James Baker has made to the Middle East, President Assad has said "no" to talk on water resource, arms control, the environment, the plight of Palestinian refugees, and repeal of the United Nations "Zionism equals racism" resolution. Instead, he has said "yes" to massive human rights violations, "yes" to torturing Syrian Jews, and "yes" to turning a sovereign Lebanon into a Syrian puppet. And now he has coerced the other Arabs attending the conference into a pledge not to conclude separate, bilateral peace agreements with Israel. These preconditions almost completely undermine the overriding purpose of the conference.

One specific concern this Senator believes must be resolved prior to achieving true peace is Arab—primarily Syrian—support for terrorist activities. Syrian sponsorship of terrorism and Arab efforts to destroy the State of Israel go hand in hand. That is why this Senator is a cosponsor of a resolution offered by my good friend and colleague from New York, Senator D'AMATO, which requests the President to include the issue of terrorism as part of the peace process.

President Bush wants to utilize a hurry-up offense hoping it will magically lead to a touchdown before time expires. What he does not realize is that this game will not end once the players leave the negotiating field. The "land for peace" formula can only be successful if all the issues necessary for peace are on the negotiating table. Without a comprehensive agreement, Israel's security will be more at risk than ever before.

I applaud the President for his resolve, and commend Secretary Baker for his tireless efforts, but caution that this conference is only the beginning of a long process—a process to which we must not attach an artificial concluding date. It has taken too long to reach this point. The question to be answered now is whether or not Israel's neighbors are serious about achieving a lasting peace with Israel so that other issues, prime among them the Palestinian issue, can be ultimately resolved. I truly hope and pray that their answer is an unwavering "yes."

HONORING LAURA SCOTT

Mr. BINGAMAN. Mr. President, I rise today to acknowledge the many contributions of my friend, Laura Scott, who came from New Mexico in 1983 to assist me in my Senate office and who has served as my office manager for the past 4 years.

A native New Mexican who earned her bachelor of arts degree in history from the University of New Mexico, Laura was an energetic campaigner in my race for the Senate in 1982. After she so enthusiastically agreed to represent me at "Bean Day" in Wagon Mound, I soon began to depend on her superb organizational and management skills.

Laura is recognized as a leader in congressional office management and innovating. She developed an information system which has increased the efficiency and effectiveness of constituent services and legislative productivity in my office. Laura is respected by her peers throughout the Senate for her expertness and generous help. Because she is so good at what she does, we are losing her to the Congressional Management Foundation, where she will serve as Deputy Director.

Aside from her duties as office manager—a position of trust and responsibility that is not always given the respect it deserves—Laura has been responsible for bringing many talented young people from New Mexico to work in my office as full-time staff members and interns. She has done her best to make sure that their experience is always memorable and has given much of her personal time and attention to making their adjustment to life in the Senate an easy one. For the past 4 years, Laura has helped me organize annual student seminars, which I host around New Mexico to give junior and senior high school students exposure to national issues pending in the Senate. It is a huge logistical undertaking, and Laura has been the key to each seminar's success.

Perhaps we all take too much for granted the work of our staffs, and those who have been with us the longest know this better than anyone else. Laura has been part of my office from the beginning, and I hope she knows how much I value her loyalty, her good sense, and her hard work. She is a treasure, and the Congressional Management Foundation, which purloined her from us with money, a fine title, and a very challenging job, is lucky to have her.

Laura is married to Eddie Church, who works in the Senate Service Department, and they are the justifiably proud parents of almost 1-year-old Lucy. Having Laura, Eddie, and Lucy as part of the Bingaman office family has been a pleasure for us, and we are glad to know that the friendship will continue. We wish her the best, of course, and hope she knows how much we will miss her.

JIM BUCHLI FLIES HIGH FOR NORTH DAKOTA

Mr. BURDICK. Mr. President, I had the pleasure this morning of once again talking with a tremendous North Dakotan, NASA Astronaut Jim Buchli. As a lieutenant colonel in the Marine Corps and a mission specialist for NASA, Buchli has greatly contributed to our understanding of the planet, flying four space shuttle missions. He told me that the atmosphere on his recent Discovery flight was the dirtiest he's ever seen it, and we discussed what can be done to reduce manmade pollution.

Jim Buchli impresses me both as an excellent astronaut and as a genuinely nice guy. He enjoys talking to young people about his experiences and show-

ing them pictures of how Earth looks from space. That makes him a hero in my eyes, as well as in the eyes of a newspaper editor in my hometown of Fargo. Mr. President, I ask unanimous consent that a column by Terry DeVine printed in the Forum on September 30, 1991, be printed in the RECORD at this point.

[From the Forum, Sept. 30, 1991]

COL. JIM BUCHLI SERVED WITH COURAGE, HONOR

(By Terry DeVine)

In this age of instant gratification in our "get my piece of the action" society, children often look no further than the sports pages for their heroes and role models. That's truly unfortunate.

Ask most 10-year-old kids who they'd like to emulate when they grow up and they'll likely respond, "I want to be like Michael Jordan." They might substitute Magic Johnson, Joe Montana, Jose Canseco, Ken Griffey Jr., or a host of other names, most of them associated with professional sports.

That's not to say that Michael Jordan and a handful of other professional athletes are unworthy of the adulation of these starry-eyed young fans. Men like Jordan and Johnson have long been outstanding representatives of their sports and have acted like the true professionals they are.

You won't read about Jordan and Johnson in the police reports, although the same can't be said for some of their professional acquaintances.

But deep down, these guys are thanking their lucky stars that they happen to live in an age when society's values are all screwed up. They know they aren't really worth one-fifth of the money they're raking in because of their physical abilities, much less a multi-million-dollar paycheck.

There are people, however, who might be worth that kind of money, but you won't find them on the sports pages. You'll find most of them laboring in science and technology, or in the classroom, or in the laboratory.

If you're looking for a real life role model for children, one needs to look no further than a man like Fargo's own Jim Buchli, the astronaut who just completed his fourth space shuttle mission.

Buchli, a New Rockford, N.D., native and Fargo Central High School graduate, has done more for mankind in his 46 years than a whole carload full of professional athletes will do in 100 years.

Buchli, a 1967 graduate of the U.S. Naval Academy in the top 10 percent of his class, has spent 24 years in the U.S. Marine Corps, serving his country in whatever capacity it asked of him. He has sought no adulation, no honors, and he has done it most of those 24 years for a whole lot less than $50,000 a year.

He has been a husband, father and sterling representative for his native state of North Dakota. He has never forgotten his roots and has returned home time and time again to speak at any number of functions.

One of only eight astronauts to make at least four missions into space, Col. Buchli could have left the service of his country long ago for four times the money in private industry. He is a profile in courage, one of that rare breed of men with "the right stuff."

None of us have any idea what kind of courage it takes to strap yourself in to a space vehicle loaded with millions of pounds of the most explosive propellant known to man. Buchli knows. He's done it four times. It's like sitting on top of a giant stick of dynamite that could become your funeral pyre in an instant.

Nonetheless, he did it. How many of us are truly brave enough to do what he did? Don't think for a minute that he wasn't aware of the Challenger disaster. He knew the risks involved. But he did it because it was his duty as a Marine Corps officer, and because his country asked him to do it.

Duty, honor, country. These are words we don't often hear in this day and age. Thank God there are still men like Jim Buchli and Jamestown native Rick Hieb, a fellow astronaut, who understand the meaning of those words, and the responsibility attached to them.

Jim Buchli is now pondering possible retirement from the military. He has served his nation well and is preparing to pass the gauntlet to a younger generation of astronauts.

He may take one of those jobs in private industry that will pay him the kind of money he never earned in the service of his country. His leadership abilities are hard to find and highly sought after by civilian employers. We wish him every success if that is his decision.

Perhaps he will even return to North Dakota to take a job. I have no idea if Col. Buchli's political leanings are Republican or Democrat, but they're definitely "American." I can think of no better political candidate to represent the state of North Dakota in Washington. He has the credentials. He has the track record. He has the "right stuff."

In any case, if he does choose to retire after 24 years of service to his country, I hope the city of Fargo or the state of North Dakota will bring him home to honor him in some appropriate way, with a testimonial dinner or some such event.

Buchli is a contemporary hero who served his state and nation with honor, courage and dignity. He became all that he could be. We are humbled in his presence.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has now closed.

CIVIL RIGHTS ACT OF 1991

The PRESIDING OFFICER. The clerk will report the unfinished business.

The legislative clerk read as follows:

A bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Danforth/Kennedy amendment No. 1274, in the nature of a substitute.

Mr. HATCH. Mr. President, as I understand, the bill is laid down for debate only at this time.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. I would like to just make some remarks about the bill.

Mr. President, I want to address some of the elements of the compromise civil rights bill now before us. As the ranking Republican on the Labor and Human Resources Committee, the Republican floor manager on this legislation last year and this year, the principal opponent of prior versions of the bill, and an original cosponsor of the pending compromise, I have followed this legislation very closely.

I want to turn to the disparate impact provisions of the bill. They have been significantly modified to remove the inducements to quotas represented by earlier versions of the bill.

Many of my colleagues have asked me, with respect to these provisions, what do we tell the business owners of our States? How do we explain this bill to them or this substitute bill that we are talking about now? The short answer is this: Under the disparate impact theory, basically the same business practices and employment standards lawful today under the Supreme Court precedents will be lawful after this substitute bill is enacted. The only difference in the law will be that an employer, instead of having the burden of producing evidence to justify the particular practice identified as causing a disparity in the job, must meet, in addition, a burden of persuasion. That is how the Wards Cove Packing Co. versus Atonio case is reversed by this bill. This change addresses section 2(2) of the compromise bill's congressional findings. The burden of proof issue is the only part of Wards Cove overruled by this bill. In theory, more than in practice, this change is very important. But because an employer's counsel presumably puts the employer's best case forward anyway regardless of the nature of the employer's burden, this constitutes the most minor practical change in current law that we could make.

Indeed, President Bush had agreed to this change in his own bill, S. 611. It is highly unlikely that employers will need to make any adjustments in their practices as a result of these provisions.

I note that the proponents of this bill's predecessors, many of whom now support the pending measure, hold the view that employers had the burden of production as well as the burden of persuasion under the Supreme Court precedents from 1971 to 1989. Under this view, the compromise's disparate impact provisions should not cause any dislocation whatsoever in employer practices.

Both on the floor Friday and in the news accounts over the weekend, if accurate, I have heard and read extraordinary accounts of what happened with respect to the disparate impact provisions of this bill. Some of my friends on the other side of the aisle are still playing politics, claiming the President has caved in. Some have asserted

that the claim that this compromise bill's predecessors would lead to quotas was untrue. They now assert that virtually no change was made in the disparate impact provisions and the President just decided to stop playing politics and accept the bill.

I responded to this in part on Friday. Our distinguished majority leader was quoted on Saturday as saying "If these few [changed] words provide the President with the fig leaf to cover his retreat, that's fine." (Washington Post, Oct. 26, 1991, p. 7.)

A lawyer with a prominent civil rights litigation group was quoted as saying "If you look at this language and compare it to the numerous other proposals they labeled a quota bill, you won't be able to find any basis for why this one is different." (Washington Post, October 26, 1991, p. 6.) I have to say anybody who believes these two comments about this substitute bill will believe anything.

I think it is unfortunate that some of my friends on the other side of the aisle have decided to use this compromise to criticize the President. In so doing they would have us disregard the major changes in the bill resulting from the President's strong stand against quotas. They would have us treat these changes as if they had never occurred. They would ignore the significance of the changes.

PURPOSES CLAUSE

Let us take a look at the very significant changes in the bill that some would have us believe never took place. Take the purposes clause. In its purposes clause, S. 1745 said in pertinent part that the "purposes of this Act are * * * to overrule the proof burdens and meaning of business necessity in Wards Cove Packing Co. versus Atonio and to codify the proof burdens and the meaning of business necessity used in Griggs versus Duke Power Co.* * *"

What does this "Purposes" clause say? "The purposes of this Act are * * * to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in Griggs versus Duke Power Co., and in the other Supreme Court decisions prior to Wards Cove Packing Co. versus Atonio."

No longer does the bill overrule the meaning of business necessity in Wards Cove. Instead, the bill seeks to codify the meaning of that phrase in Griggs and subsequent Supreme Court decisions prior to Wards Cove.

This will become very significant when we look for the definition of "job related" and "business necessity" in the pending measure. Why? Because there are no definitions of these terms in the pending measure. That is what makes so ironic the civil rights lawyer's invitation quoted earlier to compare the current language to earlier versions.

BUSINESS NECESSITY

With regard to business necessity, here are some of the prior definitions of business necessity from the prior versions of this bill. From S. 2104, the original bill in 1990, "essential to effective job performance"—clearly different from the Griggs standard. And it is clearly different from this bill.

From the very first Danforth-Kennedy proposal in the spring of 1990, "Substantial and demonstrable relationship to effective job performance"; gone from this bill, completely removed from the bill.

From the bill passed by the Senate last July, a two-tier definition whose key phrase was "significant relationship to successful performance of the job"; gone, no longer part of this bill.

You could go on and on.

The bill vetoed by the President contained yet different language in the two tiers. That is gone.

S. 1208, the first Danforth bill this year, had a two-tier definition whose key phrase was "manifest relationship to requirements for effective job performance." It then included a subdefinition of a term wholly created by the bill; "requirements for effective job performance." This subdefinition contained two tiers and these are gone, completely eliminated.

The President has insisted that they be gone because he wants the Griggs language and not some other standard.

S. 1408, the second Danforth bill this year, also bifurcated the definition of "business necessity" and further subdefined that term.

These definitions are gone in this substitute. They no longer exist.

S. 1745, the pending bill's immediate predecessor, contained a two-tier definition of business necessity. It also contained a subdefinition of a key phrase from Griggs and subsequent disparate impact which had never been defined before: "The employment in question." That subdefinition itself contained two tiers. All of that is now gone. That was the immediate predecessor bill to this one substitute that we are talking about today.

I ask unanimous consent that the "Dear Colleague" letters I sent on this year's versions of the bill explaining my concerns about them, concerns shared by the President, be included in the RECORD following my remarks.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATCH. In the place of these countless definitions of business necessity, what does the compromise say? It says the challenged practice must be "job related for the position in question and consistent with business necessity." Neither term is defined in this current substitute bill. So we return to the purposes section I read earlier.

One of the purposes of the act is "to codify the concepts of 'business necessity' and 'job-related' enunciated by the Supreme Court in Griggs versus Duke Power (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. Versus Atonio."

Mr. President, what we are saying here is this bill is completely changed on the key pivotal point of the definition of business necessity which has been the President's hope and the President's demand, the reason he has vetoed the bill last year.

In other words, the President has gotten what he wants on the definition of business necessity. That is a monumental set of changes that would not have occurred without the veto and without the threat of a veto this year which I believe would have been sustained had the business necessity language of these predecessor bills not been changed.

That is important because that is one of the basic reasons why the President vetoed this bill to begin with.

The fact is that we in these prior bills—or should I say they who were offering these prior bills—were offering language that changed the definition of business necessity from the Griggs versus Duke Power Co. case to a new definition that flew in the face of 20 years of evolving law on business necessity, on the definition of business necessity in employment discrimination cases.

Twenty years would have been reversed by these predecessor bills—and in those definitions related to business necessity, if those earlier bills would have passed, those predecessor bills, they would have narrowed the definition to such a degree that literally businesses would not have the flexibility that they have always had under the Griggs case, and the costs of defending these suits would have risen from its current average of $80,000 to somewhere near half a million dollars to defend one of these suits.

Although the bill's predecessors did not say you have to have quotas, employers would have had to turn to quotas to avoid those expensive suits that they could not afford and would almost certainly lose.

That is why it was a quota bill. That is why the President was so upset about it. That is why employers throughout the country are upset about it. That is why employer organizations are upset about it. That is why business organizations are upset about it. That is why small business organizations are upset about it. It is one of the reasons.

And the President has now gotten us back to Griggs, because he had the guts to stand up and point out that the cost of defending this type of legislation imposed upon business by these predecessor bills, the cost of defending yourself was so large, and the chances of success so small, that literally nobody

could afford to do it. I am talking just defense, not if you lose and have to pay backpay awards to boot.

And so rather than have to go through these repetitive, unfair, and in some cases, extortionate-type lawsuits, business people would have to turn to quotas and hiring people not the most qualified to do the job but hiring people who are only minimally qualified. That would change the free enterprise, free market system in this country to where we would become much like the system of Eastern Europe. Frankly, it would have taken away the incentives to have the excellence that we have in our employment system today.

Some would have us treat these substantive changes that we now have as if they never occurred. They would ignore the significance of these changes. I read article after article, and watched television over the weekend, and everybody said that the President had caved in to the other side. Come on. This was one of the key, pivotal, difficult-to-understand issues involved in this whole bill. We have been fighting it for 2 years.

The reason I am cosponsoring this bill and am one of the prime cosponsors, the reason I have been part of the negotiations behind the scenes, is because we have this change, and because no longer will there be the push toward quotas that these unreasonable, hard to defend, and expensive to defend lawsuits would have led employers to adopt.

Let us look at the very significant changes in the bill that some would have us believe never took place.

S. 1745 said in pertinent part in the purposes clause, that:

* * * purposes of this Act are * * * to overrule the proof burdens and meaning of business necessity in *Wards Cove Packing Company* v. *Atonio* and to codify the proof burdens and the meaning of business necessity used in *Grigys* v. *Duke Power Company* * * *

It is important to note that this formulation refers to Supreme Court decisions, not to narrower notions of Supreme Court holdings. The choice of the broader reference to decisions was a deliberate one. Nor are lower court decisions to be the Supreme Court's future guide.

What do these Supreme Court decisions say about business necessity? The Griggs case said:

* * * Any given requirement must have a manifest relationship to the employment in question. 401 U.S. at 4321.

There is no two-third definition, no subdefinition of the term "employment in question." The Court also said in Griggs:

Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Id. at 436.

This manifest relationship to the employment standard is the consistent standard applied by the Supreme Court. The Court has used this phrase in *Albemarle Paper Co.* v. *Moody*, 422 U.S. at 425 (1975); *Dothard* v. *Rawlinson*, 433 U.S. at 329 (1977); *New York Transit Authority* v. *Beazer*, 440 U.S. at 587 n.31 (1979); *Connecticut* v. *Teal*, 457 U.S. at 446 (1982) (a Justice Brennan opinion); and *Watson* v. *Ft. Worth Bank and Trust*, 108 S.Ct. at 2790 (O'Connor plurality opinion for four Justices). Even Justice Stevens' dissent in Wards Cove, joined by Justices Brennan, Marshall, and Blackman, cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. 2129, 2130 n.14.

This is a flexible concept that encompasses more than the actual performance of actual work activities or behavior important to the job. I point out also the case of Washington versus Davis, a 1976 case, a pivotal case in this area.

Indeed, the Supreme Court's 1979 decision in New York Transit Authority versus Beazer—we refer to it as the Beazer case—is highly significant. This decision was well known to all sides in these negotiations and debates. The Beazer case involved a challenge to the New York Transit Authority's blanket no-drug rule, as it applied to methadone users seeking non-safety-sensitive jobs. A lower court had found that to be a title VII disparate impact violation. The Supreme Court, however, reversed the lower court's decision and said:

At best, [the plaintiffs'] statistical showing is weak; even if it is capable of establishing a prima facie case of discrimination, it is assuredly rebutted by the employer's demonstration that its narcotics rule, and the rule's application to methadone users, is "job related. * * *" 440 U.S. at 587.

The Court noted that the parties agreed:

* * * that [the employer's] legitimate employment goals of safety and efficiency require the exclusion of all users of all illegal narcotics. * * * Finally, the district court noted that those goals are significantly served by—even if they do not require—[the employer's] rule as it applies to all methadone users, including those who are seeking employment in no-safety-sensitive positions. The record thus demonstrates that [the employer's] rule bears a "manifest relationship to the employment in question," *Griggs* v. *Duke Power Company*, 401 U.S. 424, 432. [440 U.S. at 587, n.31]

If the language from the 1979 Beazer decision sounds familiar, it should. The Supreme Court's formulation in Wards Cove is not only based upon it, it is nearly identical. By removing the language in the purposes clause stating the bill overruled Wards Cove with respect "to the meaning of business necessity," by substituting the language in the compromise purposes section referring to Supreme Court decisions prior to Wards Cove, and by removing the definitions of "business necessity" or "job related," and any definition of "employment in question," the compromise leaves the Supreme Court free to reach the same formulation of "business necessity" and "job related" as it and Beazer. Indeed, Beazer is unquestionably reaffirmed by the compromise bill's purposes clause and the Wards Cove formulation of business necessity is not overruled by this substitute.

I note that in *Watson* v. *Fort Worth Bank and Trust*, 108 S.Ct. 2777, decided in 1988, Justice O'Connor warned us about the real risk of imposing quotas on the American people if the title VII disparate impact theory is misused. In that case, the Supreme Court actually extended the application of the disparate impact theory to subjective employment practices, a great victory for civil rights plaintiffs. She then went on to say in her plurality opinion:

We agree that the inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. It is completely unrealistic to assume that unlawful discrimination is the sole cause of people failing to gravitate to jobs and employers in accord with the laws of chance. * * * It would be equally unrealistic to suppose that employers can eliminate, or discover and explain, the myriad of innocent causes that may lead to statistical imbalances in the composition of their work forces. Congress has specifically provided that employers are not required to avoid "disparate impact" as such; [citing a specific provision of title VII (section 703(j)]. Preferential treatment and the use of quotas by public employers subject to title VII can violate the Constitution * * * and it has long been recognized that legal rules leaving any class of employers with little choice but to adopt such measures would be far from the intent of title VII. * * * *Watson*, 108 S.Ct. at 2787–88.

By the way, she quoted Justice Blackmun in *Albemarle Paper Co.* v. *Moody*, 422 U.S. at 449.

Thus, Justice O'Connor acknowledged that:

Extending disparate impact analysis to subjective employment practices has the potential to create a Hobson's choice for employers and thus to lead in practice to perverse results. If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met. Allowing the evolution of disparate impact analysis to lead to this result would be contrary to Congress' clearly expressed intent, and it should not be the effect of our decision today. Id. at 2788.

She goes on to say:

We recognize, however, that today's extension of [the disparate impact] theory into the context of subjective selection practices could increase the risk that employers will be given incentives to adopt quotas or to engage in preferential treatment. Because Congress has so clearly and emphatically expressed its intent that title VII not lead to this result—42 U.S.C. Section 2000e–2(j)—we think it imperative to explain in some detail why the evidentiary standards that apply in these cases should serve as adequate safeguards against that danger that Congress recognized. Id. at 2788.

And then Justice O'Connor, in her plurality opinion, laid out the standards for proving a disparate impact case: First, a plaintiff must identify the specific practice it is challenging that is causing the imbalance; second, the plaintiff retains the ultimate burden of persuasion; that is, to prove that discrimination has occurred; and third, citing Griggs and the Court's 1979 Beazer decision, business necessity means "manifest relationship to the employment in question" or significantly serving legitimate employment goals of the employer, terms which she treated as interchangeable. This was the way quotas could be avoided under the disparate impact theory. This position obtained a fifth vote, that of Justice Kennedy, in Wards Cove.

That is important because Justice O'Connor recognized what the President was saying when he said that the predecessor variety of bills and varieties of language would have led to quotas, that their approaches toward the disparate impact theory would have made it so difficult for employers to win disparate impact lawsuits that the employers would have no choice other than to move to quotas or hiring by the numbers.

I have to tell you, those on the other side of this, at least the intellectuals on the outside, understand this fully and completely. And to have somebody stand on the floor and say this has never been a quota bill, never was, never would be, just shows they do not understand employment law and these cases; they certainly do not understand what Justice O'Connor, I think, very cogently and explicitly explained.

As I mentioned earlier, previous versions of this bill overturned all three safeguards against quotas mentioned by Justice O'Connor. This bill overturns the Wards Cove decision only with respect to the burden of proof issue. The other two safeguards are preserved by the compromise measure.

Justice O'Connor went on to say:

Some qualities—for example, common sense, good judgment, originality, ambition, loyalty, and tact—cannot be measured accurately through standardized testing techniques. Moreover, success at many jobs in which such qualities are crucial cannot be measured directly. Opinions often differ when managers and supervisors are evaluated, and the same can be said for many jobs that involve close cooperation with one's coworkers or complex and subtle tasks like the provision of professional services or personal counseling. [108 S.Ct. at 2787.]

She said that subjective or discretionary employment decisions and criteria should still be readily defensible under title VII's disparate impact theory as the Supreme Court developed it, with the safeguards she delineated and I mentioned earlier, only the least important of which is overturned by this compromise bill. She noted that "courts are generally less competent than employers to restructure business practices. * * *" [108 S.Ct. at 2791.]

By way of further explication of the significance of the changes in the bill which enabled me to cosponsor it and President Bush to support it, let me cite one more newspaper quote from the civil rights lawyer I quoted earlier: "Now all practices must meet the job performance standard, which is what we said from the beginning." [Washington Post, p.6, Oct. 26, 1991.] Wrong.

Let me stress that the Supreme Court, in Griggs and its subsequent disparate impact cases, treated the concepts of employment in question and job-relatedness flexibly. These terms did not mean a requirement had to be tied to performance of actual work activities or behavior important to the job. In a case decided under title VII standards, the Supreme Court made this clear. This is a case decided after Griggs in 1976: *Washington* v. *Davis*, 426 U.S. 229 (1976). There, the Court considered a test used by the District of Columbia to screen applicants for a 17-week training program at the Police Academy. The test had a disparate impact on minorities. The district court had found the test acceptable. The Court of Appeals struck down the test because it could not say there was "a direct relationship between performance on [the test] and performance on the policeman's job." [426 U.S. at 250.]

Significantly, the Supreme Court reversed. Here is what the Supreme Court said:

The advisability of the police recruit training course informing the recruit about his upcoming job, acquainting him with its demands, and attempting to impart a modicum of required skills seems conceded. It is also apparent to use, as it was to the District Judge, that some minimum verbal and communicative skill would be very useful, if not essential, to satisfactory progress in the training regimen. * * * [The] District Court concluded that [the test] was directly related to the requirements of the police training program and that a positive relationship between the test and training-course performance was sufficient to validate the former, wholly aside from its possible relationship to actual performance as a police officer.

The Supreme Court tellingly added:

Nor is [this] conclusion foreclosed by either Griggs or Albemarle Paper v. Moody [another Supreme Court disparate impact case], and it seems to us the much more sensible construction of the job-relatedness requirement [426 U.S. at 250–251.]

Thus, the Supreme Court made clear that job-relatedness goes beyond performance of the job itself or behavior important to the job. This is one more very important case overturned by the earlier versions of this bill, but preserved by the pending measure. And another reason why the President decided to support this pending measure and why I have decided to support this pending measure. These are monumental changes from earlier versions of the bill.

Mr. President, I note that the Washington versus Davis case has been cited by the Supreme Court in Dothard versus Rawlinson (1977), Watson versus Fort Worth Bank & Trust, and in the Wards Cove decision itself. I referred to it in my "Dear Colleague" of September 24, 1991. It was referred to during last year's debate on the bill.

Indeed, in the Watson case, Justice O'Connor presented an excellent summary of the Supreme Court's position that an employer can justify its selection and other employment practices on grounds other than how they relate to job performance, and that the term job-related encompasses more than job performance. This is what Justice O'Connor said in Watson:

Our cases make it clear that employers are not required, even when defending standardized or objective tests, to introduce formal "validation studies" showing that particular criteria predict actual on-the-job performance. In Beazer, for example, the Court considered it obvious that "legitimate employment goals of safety and efficiency" permitted the exclusion of methadone users from employment with the New York City Transit Authority; the Court indicated that the "manifest relationship" test was satisfied even with respect to non-safety-sensitive jobs because those legitimate goals were "significantly served by" the exclusionary rule at issue in that case even though the rule was not required by those goals. [440 U.S. at 587, n. 31]. Similarly in Washington v. Davis, the Court held that the "job relatedness" requirement was satisfied when the employer demonstrated that a written test was related to success at a police training academy "wholly aside from [the test's] possible relationship to actual performance as a police officer." [426 U.S., at 250.] See also id, at 256.

Justice Stevens, said:

"[A]s a matter of law, it is permissible for the police department to use a test for the purpose of predicting ability to master a training program even if the test does not otherwise predict ability to perform on the job". [108 S. Ct. at 2790–2791.]

Any suggestions that the Supreme Court has interpreted job-relatedness or manifest relationship to the employment in question as narrowly tied to performance of actual work behaviors, or behavior important to the job, is belied by a simple review of the pre-Wards Cove Supreme Court decisions themselves. And, as mentioned earlier, those decisions are implicitly reaffirmed by this bill.

Particularity—let me talk about that, because this is the second big issue over which the President vetoed the bill. Frankly, it is a very, very important issue. And because it has been changed from the prior predecessor bills, I can now support this bill.

With regard to particularity, the President's position in requiring a plaintiff to identify the particular practice causing a disparity in a disparate impact case has been preserved. The law on particularity will be the same after enactment of this bill as it is today. Let us compare the language of the pending compromise measure with earlier, unacceptable versions to the President and unacceptable to me.

In S. 2104 as introduced, a plaintiff could challenge an entire "group of employment practices," defined as "a combination of employment practices or an overall employment process."

In other words, all the plaintiff had to do is say one or all of the employer's practices are causing the disparate impact, and then the burden or proof shifts to the employer and the employer has to prove his or her innocence as to each and every employment practice that the employer has.

It is an impossible burden and one that the employer cannot meet, employers of any size cannot meet. That language is now gone—it no longer exists in this substitute. And particularity as we have known it before now is a definite part of the substitute.

From the bill that emerged last year from the Senate Labor Committee:

> The term "group of employment practices" means a combination of employment practices that produce one or more employment decisions.

That is gone. No longer is that a part of this bill. Gone. Something they would never give up before this year, the proponents of earlier versions of the bill.

The bill that passed the Senate had yet another formulation:

> A combination of employment practices that produces one or more decisions with respect to employment, employment referral, or admission to a labor organization.

Gone; no longer part of this bill, no longer part of this substitute that we are considering today.

The bill vetoed by the President had yet a further twist to the concept. It is gone. That twist is gone.

These are monumental changes. These are not insignificant changes. This does not sound like the President caved in. The President got what he wanted on these two absolutely crucial changes, and in these two very crucial areas of the bill, business necessity and particularity.

S. 1408, the next Danforth bill, and S. 1475, the immediate predecessor of the compromise substitute before the Senate right now, refer in pertinent part, to "a particular employment practice or particular employment practices [causing] * * * in whole or in significant part, the disparate impact. * * *" This formulation in the predecessor bill is gone; no longer part of this substitute.

For a long time, proponents of this bill's predecessors refused to use the word "cause," that is, the employment practice in question causes the disparity. The term "results in" was used, a much looser concept, inconsistent with Supreme Court case law.

Significantly, the bill now reads that an unlawful employment is established if, in pertinent part, "a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact. * * *"

The President has won again. He would veto this bill without that language, as he did in the past.

Further, the substitute states that:

> * * * with respect to demonstrating that a particular employment practice causes a disparate impact * * * the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

Thus, particularity—what the President and I have been arguing for the last 2 years—is preserved. And causation between the challenged practice and a disparate impact in a job is required.

I thought I made it clear last year when we debated that the two major issues on this, the two major logjams—there are many of them—but the two major ones to the President were the issue of business necessity and the issue of particularity.

And, particularity is preserved and causation is required. The exception for a decisionmaking process not capable of separation for analysis is narrow and is fully consistent with the Wards Cove particularity requirement and the requirement of the other Supreme Court cases. It covers two situations. First, courts will be permitted to hold that vesting complete hiring discretion in an individual guided only by unknown subjective standards constitutes a single particular employment practice susceptible to challenge.

This approach is consistent with Wards Cove, see 109 S. Ct., at 2125, and has been employed since Wards Cove in *Sledge* v. *J.P. Stevens, & Co.*, 52 EPD para. 39,537 (D.D.N.C. Nov. 30, 1989). The Sledge court alluded to the difficulty of "delving into the workings of an employment decisionmaker's mind" and noted that the defendant's personnel officers reported having no idea of the basis on which they made their employment decisions. The court held that "the identification by the plaintiffs of the uncontrolled, subjective discretion of defendant's employing officials as the source of the discrimination shown by plaintiff's statistics sufficed to satisfy the causation requirements of Wards Cove." This substitute now before us contemplates that the use of such uncontrolled and unexplained discretion is properly treated,, as it was in the Sledge case, as one employment practice that need not be divided by the plaintiff into discrete subparts.

Second, the exception also covers the narrow circumstance typified by the height and weight requirement in Dothard, where the employer clearly and deliberately treats closely related requirements as inseparable components of a single measuring device.

Let us take an example of how the bill's particularity requirement now works. Suppose an employer relies on a test, an interview, and an applicant's grade point average or other educational requirement. These employment practices are obviously elements of an employer's decisionmaking process capable of separation for analysis. Further, they are not functionally-integrated practices which are components of the same criterion, standard, method of administration, or test such as the height and weight requirements designed to measure strength in the Supreme Court's Dothard decision. Accordingly, for a plaintiff to challenge one or more of these practices, clearly, he or she must show that each particular practice challenged independently causes a disparate impact. Any other contrary analysis would reflect the group of employment practices and similar language in this bill's predecessors which has been intentionally deleted. These deletions are an integral part of the compromise which led me to cosponsor it and the President to endorse it. And, without them I would not have cosponsored it, and neither would the President have endorsed it.

Moreover, language from the bill vetoed by the President, excusing the plaintiff from the particularity requirement due to a lack of records, is dropped. This bill contains no requirement regarding record retention—existing rules of civil procedure govern. If an employer's records discoverable under the rules of civil procedure are insufficient to aid a plaintiff's effort to identify a particular practice causing a disparity where the elements of a decisionmaking process are capable of separation for analysis, then, obviously, the plaintiff must make recourse to the disparate treatment theory under title VII.

ALTERNATIVE PRACTICES

With regard to alternative practices, again very important, these are difficult concepts. These are very technical concepts. These are important concepts and important changes.

Once an employer meets its burden of persuasion that its challenged practice is justifiable, a plaintiff may still prevail. Here is how Justice O'Connor described the plaintiff's responsibility in Watson:

> The plaintiff must "show that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in efficient and trustworthy workmanship, * * *"

Citing the Albemarle Paper Co. versus Moody, the Supreme Court case from 1975, she added:

> Factors such as the cost or other burdens of proposed alternative selection devices are relevant in determining whether they would be equally as effective as the challenged practice in serving the employer's legitimate business goals. * * * 108 S.Ct. 2790.

President Bush did not retreat 1 inch on the quota-inducing elements of the disparate impact provisions of this bill.

He gained ground for American people and the principle of equal opportunity for individuals. This bill also outlaws race-norming, the alteration of test results to adjust scores on racial, ethnic, and gender bases. Where the President compromised was on the damages issue. That is clearly a place where the President did compromise. He clearly gave in, to a degree, to the other side, going beyond the relief for harassment he had been willing to establish in his own bill, S. 611. He also compromised somewhat on Martin versus Wilks and the right to a day in court.

That irritates a lot of business people in this society because they do not want made available under title VII damages or a higher ceiling on damages for harassment than what the President had set.

And, in that instance the President did give. But a plaintiff still has to prove the case and can only recover "up to," the amount of the cap, in front of a jury. Or if both parties agree, I suppose, in a nonjury trial.

Some of us have argued from the beginning that if you are going to give unlimited damages in section 1981 racial discrimination cases under the Federal code, then why should we treat women any differently?

Well, the reason why this substitute is agreed upon by both sides is there are people on our floor, Members of this body, who believe that there should be a lid on damages. But, for the first time damages will be available under title VII and for the first time you will have a right to collect damages for sexual harassment, something that is long overdue in the law, something for which I have argued from the beginning of this whole debate—something that President Bush had been willing to do in his own bill, S. 611.

In fact he has been willing to do more than that. He has been willing to overrule the Patterson versus McLean case which, of course, would allow an employee to recover in racial harassment cases under section 1981. He has been willing to overrule the Lorrance case right from the beginning which would resolve some of the seniority lawsuit problems.

So, the President has been cooperative. The President also did give on some of the language on the Martin versus Wilks case. I might add, that is an extremely important case and one that I have a lot of difficulties giving on. But it is part of the compromise here.

Moreover, a number of prolawyer provisions of last year's versions of the bill have been completely dropped by Senator DANFORTH. This is, again, a further vindication of the President's resistance to legislation which he said created, and which I say created, in these predecessor bills, a litigation bonanza for lawyers. For example, earlier versions extended the statute of limitations for filing claims, overturning at least three Supreme Court decisions: *United Airlines* v. *Evans*, 431 U.S. 553 (1971); *Delaware State College* v. *Ricks*, 449 U.S. 250 (1980); and *Chardon* v. *Fernandez*, 454 U.S. 6 (1981). Earlier versions prohibited attorneys fee waivers in class action settlements overturning *Evans* v. *Jeff D.*, 475 U.S. 717 (1986). Finally, earlier versions overturned the Supreme Court's decision in *Independent Federation of Flight Attendants* v. *Zipes*, 109 S. Ct. 2732 (1989), permitting the recovery of plaintiff's attorney fees from the original defendant in actions by intervenors.

I also note that section 18 of the bill says, "Nothing in the amendments made by this act shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law." This section expresses neither congressional approval nor disapproval of any judicial decision affecting court-ordered remedies, affirmative action, or conciliation agreements including the Weber, Johnson, Local 78, and Paradise Supreme Court decisions.

Mr. President, the reason I have been giving these remarks is not only to show that the President did not cave at all on the important issues that he said he had to have or he would veto the bill. Neither did Boyden Gray and his team of legal experts down there at the White House. Neither did the Justice Department. And neither did people like myself.

These things had to be changed before we could support a substitute compromise like the one we have on the floor today. And when we got these changes we would accept some of the other changes the other side had wanted, or some of the language the other side wanted on Martin versus Wilks, on damages, in order to bring about a compromise that would resolve this very important issue.

Mr. President, all this having been said, if this bill passes it is still going to be a very difficult bill for businesses. Certainly nowhere near as difficult as it has been for the last 2 years, or would have been had the President not vetoed the bill last year, and had his veto not been sustained here. This bill is now changed. But even with these changes in this area of law, the bill is very difficult for businesses who are now exposed to damages under title VIII.

If it costs on an average to defend these cases $80,000, it does not take many brains to realize that lawyers who can get those cases know that they can get a third to 40 percent of whatever they recover—and a lot of businesses are going to be willing to pay less than $80,000 just to get rid of the problem. That is done every day in a wide variety of litigation in this country. And some of it borders on extortionate litigation—extortionate because they do not have a case. But because the employer, regardless of size, is going to have to pay about $80,000 just to defend himself or herself even if he is absolutely right. It is cheaper for the employer to just pay the settlement money and get rid of the case than it is to continue to try it and maybe get some court that might unjustly find for plaintiff as well, because he is going to save at least part of the $80,000 he would normally have to spend to defend himself or herself in the case.

All of this aside, this has been listed as a civil rights bill. In a very real sense this is not that much of a civil rights bill. If we really want a civil rights bill, let us start talking about how we lift people out of poverty. Let us start talking about education that is needed today and access to education. Let us start talking about a whole raft of issues that would truly help people to become equal in our society and let us quit splitting hairs on what some think happens to be civil rights law.

From the beginning we have said, and rightly so, if anybody reads the substitute which is now agreed upon by the principal figures in this matter—we have said from the beginning that we could not take anything but the Griggs language on business necessity. This substitute now provides for that. It is flexible language. And we could not accept the lack of particularity language we had before. That now has been changed and there are other changes that are valid.

Therefore, I am a cosponsor of this substitute, and I will do everything I can to see that it is passed. I hope it will be passed overwhelmingly because I think it is a great effort for all concerned to try to do what is right on this particular issue. Even though I would still make some changes if I had the sole right to do so, I have to say that is what compromise is all about. The important thing is we have not compromised on the disparate impact provisions of the bill.

Mr. President, I know the distinguished Senator from Kansas is prepared to offer an amendment. Therefore, I yield the floor.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 13, 1991.

DEAR COLLEAGUE: I sincerely commend Senator Danforth on his recent efforts to try and develop legislation that satisfies the concerns of all parties involved in the civil rights debate. Clearly, the bill that passed the House of Representatives last week satisfied none of the concerns that have been raised with regard to this legislation.

I have concerns and questions, however, about the details of the legislation with which Senator Danforth has decided to move forward. These concerns have been conveyed by a separate letter to Senator Danforth. Moreover, I do not feel that many persons have given the President's bill sufficient attention.

The President's bill is a strong bill. It represents a compromise between the status quo under *Wards Cove*, by shifting the burden of persuasion to the employer, and the Democrat's bill. The President's bill, in my view, ought to form the basis for resolving this matter in a way which adequately responds to recent Supreme Court decisions, but will not lead employers to hire by the numbers to avoid litigation.

I admit, therefore, to reservations over efforts that are aimed at achieving a "middle ground" between the Democratic bill, which I believe will inevitably result in unfair preferences, and the President's bill. This is a road some of us have been down before. With the second anniversary of the *Wards Cove* decision upon us, I have yet to hear how cases that ought to have been won have been lost in court because of that decision. I urge interested senators to discuss with the Attorney General how cases have played out under *Wards Cove*.

The debate over civil rights does not resonate in this country because persons do not believe in equal opportunity. It resonates because people out there, many based on firsthand experience, believe that unfair preferences and reverse discrimination are already too much a part of the workplace. The divisiveness of this matter is not a result of Washington political rhetoric. It is a reaction to what has been happening in the workplace. Indeed, according to a Washington Post story (attached hereto), even a survey taken by the Leadership Conference on Civil Rights reflects this.

This letter might be a useful starting point to briefly outline some of the questions and concerns I have with Senator Danforth's proposal. I address here only one of his bills i.e., on *Wards Cove* (S. 1208), but also have some concerns about the other bills.

Let me mention at the outset that the disparate impact standard itself is a very powerful tool for plaintiffs. Relying as it does on workforce statistics as its underlying premise, and requiring no intention to discriminate, the theory itself, in any form, creates significant pressure for employers quietly to make sure their numbers are right to avoid these kinds of lawsuits.

That is why carefully keeping this theory within reasonable bounds is important. What we are trying to avoid is even more pressure on employers to hire and promote by the numbers. This is the concern that led Justice O'Connor, in her 1988 plurality opinion in *Watson* v. *Ft. Worth Bank & Trust Co.*, 108 S.Ct. 2777 (1988) (plurality opinion), to say that the plaintiff must identify the practice causing the disparity in a job, the burden of persuasion remains at all times with the plaintiff to show that discrimination occurred, and the definition of "business necessity" must reflect *Griggs*, v. *Duke Power Co.* She feared that in the absence of these safeguards, employers will quietly resort to hiring and promoting by numbers, whatever the euphemism used to mask it. These safeguards were especially important, she said, because in *Watson* the Court for the first time extended the disparate impact theory to subjective practices, like supervisor evaluations and interviews. As you know, after Justice Kennedy was confirmed, these same principles were adopted by a majority of the Court in *Wards Cove*.

With respect to the particulars of the bill, I have these comments. First, one of the most visible aspects of this controversy is the definition of "business necessity." Proponents of reversing *Wards Cove* have always said that all they want to do is to "restore" *Griggs*. They have never produced a definition, however, which does so. Neither, unfortunately, does the Danforth bill.

In *Griggs*, the Court defined business necessity as "manifest relationship to the employment in question." The Court's subsequent disparate impact cases clearly reflect this definition.[1]

The Court has used this phrase in *Albemarle Paper Co.* v. *Moody*, 422 U.S. at 425 (1975); *Dothard* v. *Rawlinson*, 433 U.S. at 329 (1977); *New York Transit Authority* v. *Beazer*, 440 U.S. at 587 n. 31 (1979); *Connecticut* v. *Teal*, 457 U.S. at 446 (1982) (a Justice Brennan opinion); and *Watson* v. *Ft. Worth Bank & Trust*, 108 S. Ct. 2777, 2790 (1988) (O'Connor plurality opinion for four Justices). Even Justice Stevens' dissent in *Wards Cove*, joined by Justices Brennan, Marshall, and Blackmun, cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S. Ct. at 2129, 2130 n. 14.

The most obvious problem with the Danforth bill's deviation from *Griggs* is its new standard requiring that employment practices "bear a manifest relationship to the requirements for effective job performance." The phrase "effective job performance" or like phrases have consistently caused the concern that employers will only be able to hire marginally qualified applicants. At a minimum, since this is a new and different standard that has not appeared in any Supreme Court disparate impact case including *Griggs*, it will engender years of costly litigation to thrash out its meaning.

As many industrial psychologists have advised me, terms like "effective job performance" suggests job performance is dichotomous rather than continuous. Job performance simply cannot be separated into "effective" (or "successful") versus "ineffective" (or "unsuccessful"). Job performance is better viewed along a continuum, such as ineffective, minimally effective, fully effective, excellent, and outstanding. So long as requirements yield a minimally effective employee under S. 1208, those standards cannot be raised if to do so results in a disparate impact on a group.

I do not believe tha the bill's language—"nothing in Title VII or this Act shall be construed to prevent an employer from hiring the most effective individual for a job"—resolves this concern in any way. The problem with this language and all other versions of the bill to date, other than the President's and Al Simpson's, is not that employers will literally be "prevented" from doing anything. The problem is that the potential for litigation and liability costs for not satisfying the bill's disparate impact rules will make quiet hiring and promoting by the numbers the only safe recourse to avoid a lawsuit. These rules create the problem.

Moreover, Senator Danforth's definition of "requirements for effective job performance," compounds the problem. By saying one need only perform the job "competently," it reinforces the notion that once minimally satisfactory job performance is obtained, raising standards is illegal if doing so causes a disparate impact. Defining "effective" in this way, renders the concept of relative qualifications a practical nullity. A plaintiff will easily be able to tell a hapless employer trying to hire or promote the best qualified person that under the bill's definition of effective job prformance, there is no way to say one of two applicants is more "effective" than the other if both are competent. This language, inadvertently, denies the employer that flexibility.

Plus, why put into a statute, as Senator Danforth's bill does, that the person must be judged on the "actual work activities lawfully required by the employer?" Who determines what are part of the actual work activities of a job—a bureaucrat at EEOC? A federal judge? I thought employers get to determine what the job is—it is the practices they use to hire and promote for a job that are properly subject to a disparate impact analysis, not the content of the job. Moreover, the content of many jobs is fluid, reflecting the day-to-day realities of the workplace. The same questions apply to the term "competent," which will now be construed by bureaucrats and judges as well. I just don't think the workplace is so mechanical and rigid a place as to be susceptible to legislative categorizations such as these. The bill's further use of the phrase "important to the performance of the job" is subject to the same concerns.

Indeed, this is an entirely new legislative superstructure imposed on employers. All of these new terms and phrases are fraught with importance and will affect employers in the conduct of their business. The unavoidable consequence will be years of litigation to thrash all of this out. Employers have spent 20 years adjusting to *Griggs*. Instead of employers being able to focus on removing barriers to upper level jobs—the "glass ceiling"—this bill will force them to divert their attention back to entry and mid-level hiring and promotion issues many of them thought they had worked out in the last two decades.

Another concern, of course, is that this bill applies the "effective job performance" requirement to all selection practices. Many selection practices, however, such as layoffs and transfers due to a plant relocation or closure cannot possibly meet an "effective job performance" test. These selection decisions may be made for very legitimate nonperformance related reasons. As we all recognize, if these decisions are made for discriminatory reasons, they will be pursued as cases of intentional discrimination.

It is becoming almost bizarre that, if we all say we want to restore *Griggs*, we just don't do that and avoid these problems.

Second, on the "particularity" issue, I think I understand what Senator Danforth is trying to achieve. The bill's langauge, however, does not achieve the appropriate result.

The provisions of the Danforth bill bear little resemblance, to my knowledge, to what any court, before or after *Wards Cove*, has required. Why do we need language in this regard? Where are the post *Wards Cove* cases that have reached a result in this regard with which we disagree? Codifying detailed, technical and confusing requirements will only lead to costly litigation with no real equal opportunity interests being served.

The Danforth language also still allows a blanket complaint against an employer's entire set of practices. It does not require that an individual practice cause a disparity. Indeed, by merely requiring identification of practices that are "responsible in whole or in significant part for the disparate impact," it allows a plaintiff to challenge all of an employer's practices. This type of challenge will occur since all such practices are, as a group, responsible for the disparity.

Even assuming that a complaint might be narrowed down after a case is well underway,

[1] Incidently, I have always believed that the *Wards Cove* formulation—"whether the challenged practices serves, in a significant way, the legitimate employment goals of the employer"—is consistent with *Griggs*. Indeed, the Court pretty much said so in 1979. *New York Transit Authority* v. *Beazer*. 440 U.S. 568, 587 n. 31. (1979).

which I doubt will occur under the bill's language, the key point remains: no employer wants to run the risk that it will have to defend all of its practices, let alone defend each of them under a new business necessity definition. How will they avoid the problem? By quietly hiring and promoting by the numbers, to avoid disparate impact in the first place and the lawsuit that will follow.

This language also opens the door to the resurrection of the discredited comparable worth theory of pay discrimination, i.e., that employees in primarily female (or minority) jobs are paid less than employees in different but allegedly comparable male (or non-minority) jobs. As you know, employers rely on a range of factors in setting pay, including marketplace factors and the like. There is no way anyone can narrow down the particular practices resulting in the setting of pay. Justice Kennedy, while still on the Court of Appeals for the Ninth Circuit, wrote an excellent opinion explaining why the disparate impact theory is inappropriate for challenges to paysetting practices precisely because of the need to identify the particular practice causing the disparity. *AFSCME* v. *State of Washington*, 770 F. 2d 1481 (9th Cir. 1985).

I also tried to resolve this problem last year in an effort to reach a compromise. The language then, similar to the Danforth bill now, did not reflect my preferred approach. Simply stating that particular cases are not overruled will not preclude the use of the comparable worth theory, under this bill, in the future.

Third, under this bill, even if an employer can justify its practices under the very difficult test of "business necessity," he or she is still liable if a plaintiff can demonstrate that there is an alternative practice that would serve the employer as well but have less disparate impact. I understand that this provision may have been included under the view that it reflects what the law has always been. It does not. Rather, the Supreme Court has held only that such a showing would be evidence that the practice was being used as a pretext for discrimination, not dispositive of the question whether the employer committed discrimination. *Albermarle Paper Co.* v. *Moody*, 422 U.S. 405, 425 (1975).

I think this has serious implications. An employer, to be protected from liability, would have to search the universe before implementing each and every one of its employment practices, even if such practices readily satisfy the business necessity standard, to try to find those that meet his needs with the least disparate impact. But even that is not enough, because there is no way that an employer can predict beforehand whether one particular practice versus another will have a disparate impact on any particular group. This provision, by itself therefore, might lead an employer to hire or promote only by the numbers. That may be the only one way to avoid potential liability with any certainty.

Three other quick points. This bill has language saying the bill does not "require or encourage an employer to adopt hiring or promotion quotas." I have never argued that any bill requires such a result, only that the rewriting of the Supreme Court's disparate impact rules will induce employers quietly to hire by the numbers, whatever the euphemism used to mark it, to avoid these lawsuits. And saying the bill does not "encourage" this result is of no practical effect in light of its new disparate impact rules. Hortatory language does not help when the operative language of this bill leads in the direction of hiring and promoting by the numbers.

The language that "the mere existence of a statistical imbalance in the workforce of an employer on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation," solves none of our concerns. First, the issue is not the composition of the employer's workforce as a whole, but of a particular job. Second, which statistical imbalance is being referred to—the general population, the relevant job market for the occupation in question, or the applicant pool? If it is the first comparison, it does not address the concerns we have raised about misuse of statistical comparisons. But, third, in any event, no plaintiff will allege that the disparate impact alone whatever comparison is used, is illegal. The plaintiff will assert the disparity is caused by some or all of the employer's practices and that is what is illegal. This language gives no succor.

Finally, I applaud Senator Danforth's response to the pernicious practice of race-norming. But, if an employer is guilty of discrimination, why should an innocent job applicant have his or her test scores jimmied because of his or her race or ethnicity? Under the bill, if an employer unintentionally discriminates, innocent employees can have their test scores altered on these grounds. That is no more "fair" because it is embodied in a court order than if undertaken voluntarily by employers. If an employer has discriminated, then give the discriminatees back pay, the next available job that they have been wrongly denied, retroactive seniority, and, of course, end the use of the discriminatory practices—but don't juggle an innocent, future applicant's test scores because of race. What did he or she do to deserve such unfair treatment? If a particular test causes a disparate impact and cannot be defended under the *Griggs* business necessity standard, then the test itself fails. No readjustment of the scores would be needed in this circumstance.

I sincerely regret that I firmly believe that Senator Danforth's *Wards Cove* bill will have the same inevitable consequences as H.R. 1, albeit by using some different language. Perhaps the best solution, suggested by his splitting these issues into three bills, is to get behind the overturn of *Lorance* on seniority systems and *Patterson* on Section 1981 and challenge the Democrats to pass the bill. There is where we have had unanimity since day one.

Sincerely,

ORRIN G. HATCH,
U.S. Senator.

[From the Washington Post, Mar. 9, 1991]

RIGHTS DRIVE SAID TO LOSE UNDERPINNINGS

(By Thomas B. Edsall)

Key civil rights leaders are struggling to develop strategies to counter findings of a private voter study they commissioned that shows the civil rights movement has lost the moral high ground with key segments of the white electorate.

The study, according to one of its authors, Celinda Lake, found that "the civil rights organizations and proponents of civil rights were no longer seen as . . . addressing generalized discrimination, valuing work and being for opportunity. The proponents weren't seen as speaking from those values."

The study, commissioned by the Leadership Conference on Civil Rights, a coalition of labor, civil rights, women's and liberal organizations, found strong support for such basic principles as equal opportunity, promotion for merit and hard work, and for fairness in the workplace. But the study also found that many white voters believe civil rights advocates are pressing for special, preferential benefits instead of such goals as equal opportunity.

The conference, which declined to release the written reports or the poll data, is seeking to develop a strategy to win approval of the Civil Rights Act of 1991. The organization is particularly concerned because racial issues contributed to President Bush's victory in 1988, and the issue of "quotas" helped produce Republican victories in the 1990 California gubernatorial contest and the North Carolina Senate race.

Bush vetoed last year's civil rights bill because he said it would result in quotas, and congressional Democrats were unable to overturn it. The administration is ready to make a similar argument this year, and Democrats are looking for a way to defuse what has become a politically persuasive issue.

Ralph Neas, executive director of the conference, said, "We want to particularly stress that the bill is an inclusive bill, that it is a bill for racial minorities, it is a bill for women, it is a bill for persons with disabilities, it is a bill for all working Americans."

This strategy, according to the study, faces some hurdles. There is a strong receptivity to Bush's argument that the civil rights legislation will result in quotas.

"Voters believe that business will implement this bill as quotas," Lake said. "Whenever legislation or policy distinguishes among groups [blacks, white, Hispanics, men, women], business, just to get it done, will implement quotas." These findings are especially damaging to efforts to counter the Bush administration's portrayal of pending civil rights legislation as promoting quotas. "There is no resistance to the Bush notion about quotas," one source said.

Another damaging finding of the study was that advocates of civil rights "have lost the advantage," Lake said. "It's a tremendous loss in terms of moving an agenda forward." She based her comments on the study for the leadership conference and on work her firm, Greenberg-Lake, has done in the past decade.

Lake said the problem facing civil rights proponents is that such advocacy is now seen as pressing the "narrow" concerns of "particularized" groups, rather than promoting a broad, inclusive policy of opposing all forms of discrimination.

The study found that many white voters believe there is pervasive reverse discrimination in the workplace and that civil rights leaders are more interested in special preferences than in equal opportunity, according to persons involved in the research.

The study, which included a national poll and focus groups held in white working-class and southern communities, did not find intensified racism or opposition to fundamental principles of equality. Instead, it showed strong support for basic egalitarian principles, including equality of opportunity and the obligation of employers to give everyone a fair chance.

In addition, the study found strong opposition to discriminatory practices based on race, gender, age or disability, according to Lake and Geoff Garin of Garin-Hart Strategic Research, another Democratic polling firm.

Garin would not make as strong a judgment of the difficulties facing the civil rights movement, but, he said, "at some point the civil rights community needs to restate its claim to the idea of a level playing

field, and that means in part being more forthcoming in saying that reverse discrimination is unacceptable."

Neas contended that the most troublesome conclusions voiced by Lake were not based on the poll data, but on the focus groups, for which voters averse to civil rights had been purposefully selected, and on the basis of other work by the Greenberg-Lake firm, which has specialized in studying working and lower-middle-class white votes the past decade.

Lake said the critical views of the civil rights movement are held most strongly by key swing votes in the electorate—"blue-collar voters, economically marginal younger voters, ticket-splitting, swing white Southern voters"—who in any election are critical to the strategies of both parties to "add up enough voters to get to 51 percent."

"It is a broad-based problem," she added, with similar, if less intense, views held by many other white voters.

Among some of the other findings from the voter study, according to on-the-record interviews and background information provided by those familiar with it:

Many white voters see the work force as a hierarchy, in which many hiring and promotion decisions are based as much, if not more, on race and gender as on merit and performance.

Civil rights laws are seen by a substantial number of voters as creating unfair advantages, setting up "rank orders of privilege in the labor market," one source said.

Public support of egalitarian principle is closely tied to a strong belief that a primary responsibility of elected officials is to support the mainstream goals and values of the middle class.

Voters want politicians who represent them to "address the middle class, those who work hard and pay all the taxes," Lake said.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, August 1, 1991.

DEAR COLLEAGUE: As I did in my June 13, 1991, Dear Colleague with respect to his earlier efforts, I again commend Senator Danforth for his efforts to craft a civil rights package, now reflected in S. 1407 through S. 1409. But, while I believe it is an improvement over H.R. 1, now on the Senate calendar, I respectfully submit that it does not solve the serious problems identified in H.R. 1, including the quota problem.

BUSINESS NECESSITY

I do not believe the treatment of business necessity in S. 1408 (the bill overturning *Wards Cove*), for example, reflects the reality of the workplace. The Supreme Court, in its *Griggs* decision, defined the concept of "business necessity" as meaning "manifest relationship to the employment in question." 401 U.S. at 432. And that is exactly how the Supreme Court construed *Griggs* in its subsequent decisions. *Albemarle Paper Co.* v. *Moody*, 422 U.S. at 425 (1975); *Dothard* v. *Rawlinson*, 433 U.S. at 329; *New York Transit Authority* v. *Beazer*, 440 U.S. at 587 n.31 (1979); *Connecticut* v. *Teal*, 457 U.S. 446 (1982) (a Justice Brennan opinion); *Watson* v. *Ft. Worth Bank & Trust*, 108 S.Ct. at 2790 (1988) (O'Connor plurality opinion for four Justices). This language has become a term of art, so to speak. It is a flexible and fair concept built upon by the Supreme Court over 20 years, able to handle the wide variety of circumstances arising in American workplaces. The *Wards Cove* language, "whether a challenged practice serves, in a significant way, the legitimate employment goals of the employer," is consistent with *Griggs* as the Court made clear in its 1979 *Beazer* decision. 440 U.S. at 587, n.31 (1979).

Senator Danforth's bill uses terms from Supreme Court decisions, but, regrettably, does not stop there. It produces new language, creates new concepts, unnecessarily bifurcates the concept of "employment in question," and then defines that term too narrowly.

The phrase "manifest relationship to the employment in question," as used in *Griggs*, is broad enough to encompass as an appropriate factor a job applicant's potential for promotion down the road. S. 1408's language, tied to performance only of the job or class of jobs in question, is not. "Manifest relationship to the employment in question," as used in *Griggs*, is broad enough to allow employers to set job qualifications higher than that necessary to produce a minimally adequate employee; S. 1408's language does not.

In the real world of work, many employers need to hire people who can adapt to a job whose duties or functions, and the skills needed to perform them, can change shortly after a person takes the job. Moreover, employers often seek employees for a particular job who have the potential to advance within the company.

Suppose an employer hiring for a lower level or entry level job considers, as one factor, the applicants' potential for advancement in the company. This factor, of course, has nothing to do with ability to perform the job for which the applicants are then being considered. Under the Danforth bill, if the potential for advancement factor, standing alone or in combination with other employer practices, causes a disparity in a job, then the employer has broken the law. In my view, that result is inconsistent with common sense and Supreme Court precedent from *Griggs* onward.

In my own office, for example, I like to hire legislative correspondents who are likely to be able to assume greater responsibilities over time, such as those of legislative assistants or aides. I sincerely believe S. 1408 does not allow consideration for this factor if to do so falls with a disparate impact.

Similarly, if an employer wants to test for the trainability of an employee, the ability of an employee to acquire new skills and adapt to the changing content of the job for which he or she is hired, S. 1408 renders the employer a violator, if these factors yield a disparate impact. The reason is that under S. 1408 all job qualifications can only be defended if tied either to the actual work activities required for, or behavior important to, the particular job for which an employee is selected.

These are just two of the problems that arise from S. 1408's definitions and sub- definitions of business necessity.

By now, I am certain that you have all repeatedly heard that the principal remaining difference between some of those who voted to override the President's veto and the opponents of S. 1408 has been reduced to whether an employer should be allowed to use a high school diploma requirement for a janitor's job. This is not accurate. But, in any event, that question concerning janitors will be answered the same under the President's bill as under *Griggs*. Why? Because the President's bill is fully consistent with *Griggs*, except that it is even more favorable to civil rights plaintiffs by shifting the burden of persuasion to the employer.

What Senator Danforth is concerned about is already addressed by current caselaw, including *Wards Cove*, which has consistently been mischaracterized as inconsistent with prior Supreme Court precedent. His concern is addressed by the President's bill and poses, in fact, a nonexistent problem.

To address this "problem," his bill creates brand new definitions and clauses which inevitably, even if inadvertently, narrow an employer's reasonable prerogatives in hiring, promoting, transferring, and dismissing employees. At best, it will cause an unnecessary and artificial rigidity in the workplace that inevitably results from highly technical legislation—legislation that must cover myriad and unpredictable circumstances in the workplaces of millions of widely different employers. I respectfully submit that it will force employers faced with litigation uncertainties and potential lawsuits they are likely to lose to lower their employment standards and hire by the numbers.

Incidentally, on the merits, whether a high school diploma requirement for janitors is lawful depends on the precise duties of the janitor. Some janitors may have to tend and repair equipment and machinery, handle chemicals or hazardous fluids or perform other tasks more sophisticated than members of the Senate may realize. Moreover, I agree a high school diploma is inappropriate for some jobs under *Griggs*, we should not be so quick to denigrate such a requirement. Albert Shanker, long-time president of the American Federation of Teachers, wrote a column in the March 24, 1991, *New York Times* entitled, "The New Civil Rights Bill—Making School Count." In that article, he warned about civil rights legislation that sends our youngsters the wrong signal about the value of educational achievement, especially high school educational achievement.

More recently, Secretary of Education Lamar Alexander raised similar concerns about the provisions of S. 1408. In a letter dated July 25, 1991 (attached), Secretary Alexander observed the following:

Contrary to . . . global reality, S. 1408 appears to say that employers will not be able to require entry level employees to have the skills and knowledge necessary to perform functions other than those required by the exact job for which they are being considered. In effect, the bill seems to require that employers hire as if every job is a changeless and dead-end job. The Secretary concluded by urging Congress "not do anything to remove or undercut the ability of the labor market to reward students who work hard and finish school."

OTHER SERIOUS PROBLEMS IN S. 1408

Finally, it bears emphasis that there are a number of other issues in Senator Danforth's bills that are of tremendous importance. In the *Wards Cove* bill, for example, the particularity issue—the need for plaintiffs to identify the specific practice or practices causing the disparity—is not solved. It inappropriately allows attacks on a group, or all, of an employer's practices when there is a disparity in the "bottom line" numbers of a job. For example, each practice causing a significant part of the disparity can be attacked, and "significant" is undefined. The Court requires that the challenged practice cause the disparity, not contribute to it in part.

Moreover, the bill's language will authorize the resurrection of the misguided comparable worth theory of pay discrimination, a theory discredited by almost every court that has considered it. It is impossible for an employer to separate out all of the elements of its paysetting practices—the marketplace is not so readily compartmentalized. Comparable worth attacks, which can cost the economy billions of dollars, will be given an

undeserved rebirth under this bill. I have been warning about this for over a year.

OTHER SERIOUS PROBLEMS

There are, of course, other issues in Senator Danforth's remaining two bills that are very important. The right to a day in court is not some trivial matter. The Danforth bill, S. 1407, would unfairly slam the courthouse door on police officers, firefighters, and others seeking to challenge the implementation of a consent decree, as it operates to harm them—a consent decree entered in a case to which they had not even been a party. All these Americans seek is a right to have their equal protection and civil rights claims heard—claims they win or lose on the merits, but claims that should at least be given a day in court. But, these claimants who benefit under *Martin* v. *Wilks* are expected primarily to be white and male asserting a charge of reverse discrimination, and therefore we are asked to take that right away. Of course, if we thought there were a prowler in our house, or if a fire were to break out, the police officers and firefighters would be the first persons we would welcome through our own front doors.

Further, the overrule of Justice Brennan's *Price Waterhouse* mixed-motive decision will trigger an avalanche of litigation.

Finally, the damages issue covered in S. 1409 remains to be of great concern to businesses of all sizes.

I hope you will keep these concerns in mind when this legislation is before the Senate.

Sincerely,

ORRIN G. HATCH,
U.S. Senator.

U.S. DEPARTMENT OF EDUCATION,
THE SECRETARY,
July 25, 1991.

Hon. ORRIN G. HATCH,
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: Thank you for your recent letter requesting my views on the effects S. 1408 could have on the national crusade for education reform. I am deeply concerned about the possible effect that S. 1408 could have on student motivation to stay in school and to work hard in school. Although the "business necessity" language of the bill is ambiguous in some respects, it is my understanding that employers would often have difficulty in defending the use of legitimate educational criteria in making hiring decisions. I have grave doubts about the wisdom of legislation that would threaten employers with civil liability if they asked prospective employees for a high school transcript or a diploma. To tell employers not to consider such information when making hiring decisions would undermine the importance of staying in school and working hard in school. It would send precisely the wrong message to students and teachers. It would say to students that staying in school doesn't matter, because employers don't have the right to know whether you graduated or whether you did well. It would say to teachers that their work is unimportant in the outside world.

Virtually everyone who is concerned about the future of our nation understands that our population is not sufficiently well educated to meet the demands of the twenty-first century. Study after study has shown that neither our young people—nor our adult population—has the level of knowledge and skills that will be needed to succeed in a changing world. In order to change this situation, we must improve our schools. In order to improve our schools, we must enhance incentives for students to do well in school. We must send a message that attendance in school, achievement in school, and graduation from school are important. Our plans for improving the nation's educational system will be jeopardized by any legislation that inadvertently devalues schooling and depresses academic standards.

I am sure Congress is well aware that our national competitiveness depends on a better educated workforce. Because the global economy is rapidly changing, workers must have the skills to adapt to new work requirements or otherwise they will be left behind by change. Education is the key to equipping workers to respond to change. Employers in many competing nations routinely examine the educational credentials of prospective employees.

Contrary to this global reality, S. 1408 appears to say that employers will not be able to require entry-level employees to have the skills and knowledge necessary to perform functions other than those required by the exact job for which they are being considered. In effect, the bill seems to require that employers hire as if every job is a changeless and dead-end job.

I hope that the Congress will not do anything to remove or undercut the ability of the labor market to reward students who work hard and finish school.

Sincerely,

LAMAR ALEXANDER.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 24, 1991.

DEAR COLLEAGUE: Senator Danforth has described the most recent version of his civil rights bill as based on the Americans With Disabilities Act (ADA) with respect to the definition of "business necessity."

I am the Ranking Republican on the Committee which considered the ADA and the Republican Floor Manager of that bill. I respectfully submit that the ADA, properly understood and in context, does not support the recent civil rights bill's concept of business necessity.

This latest version of the civil rights bill has taken a few words out of context from the ADA. The language in that bill regarding business necessity is not the provision from the ADA.

The ADA did not define the term "business necessity" at all. Nor did the ADA use or define "employment in question," a term used in the pending civil rights bill. In contrast, the civil rights bill defines and delimits these terms. Thus, to suggest that the "new" version of the bill incorporates the ADA is inherently inaccurate.

One of the main issues in the civil rights bill is the definition of business necessity. I can tell you we deliberately did not define that term and left it for the courts, based on existing case law.

Moreover, Title VII and the ADA are fundamentally different statutes:

The goal of Title VII is to treat race as irrelevant; a principal goal of the ADA is to take disability into account where necessary to have employers reasonably accommodate to the needs of applicants and employees with disabilities.

Title VII disparate impact cases are always statistical; under the ADA, statistics are rarely used—indeed, there are virtually no reliable statistics available (such as the number of persons with visual impairments in the applicant pool or relevant labor market).

Under the ADA, an individual plaintiff can identify practices or barriers, like inaccessible bathrooms or a lack of ramps and curb cuts, that screen out persons with disabilities. An employer's failure to have curb cuts, ramps, and accessible bathrooms is not intentionally discriminatory; but, it does fall with disparate effect (impact) on persons with disabilities. No statistical analysis is required under this disparate impact theory, as is the case under Title VII. The ADA's statutory standards are then applied.

In short, this ADA form of disparate impact theory is not the same in the pending civil rights bill. Comparing the ADA to the pending civil rights bill is comparing apples to oranges.

Indeed, under Supreme Court Title VII precedent, "job-related" and "business necessity," terms used but not defined in the ADA, are flexible. They do not mean just performance of actual work activities or behavior important to the job.

In 1976, in a case based on Title VII standards, *Washington* v. *Davis* [426 U.S. 229], the Supreme Court was clear on this. There, the Court of Appeals overruled the District Judge and struck down a test related to performance in a police training program because it was not related to performance of a police officer's job. The Supreme Court reversed and approved the test, despite its lack of relationship to actual job performance. The Court said, ". . . the District Judge concluded [the test] was directly related to the requirement of the police training program and that a positive relationship between the test and training-course performance was sufficient to validate the former, wholly aside from its possible relationship to actual performance as a police officer . . . [This] conclusion [is not] foreclosed by either *Griggs* or *Albemarle Paper Co.* v. *Moody;* and it seems to us the much more sensible construction of the job-relatedness requirement." [426 U.S. at 250–251] [emphasis supplied].

Further, in 1979, in *New York Transit Authority* v. *Beazer*, the Supreme Court construed "job-related" and "manifest relationship to the employment in question" virtually the same way it did in *Wards Cove* 10 years later.

A number of these points have also been made by Evan Kemp, Chairman of the EEOC and one of the nation's leading experts on disability rights, in his September 21, 1991 statement. I also refer to my June 13 and August 1 letters concerning the general subject.

The President's bill remains the fairest way to resolve the civil rights controversy—and it does so without undue pressure for quota hiring, the erosion of standards in the workplace, and without slamming the courthouse door in the face of innocent persons seeking a day in court to assert their equal protection and civil rights claims.

Sincerely,

ORRIN G. HATCH,
U.S. Senator.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, I would like to say a word this morning on the difficult, contentious subject of legislative history, what its limitations are, and how the issue of legislative history is one that is now before the Senate.

Justice Scalia has taken the position that the Supreme Court should not get into the business of interpreting legislative history but that instead the

Court should attempt to construe legislative language as it appears in statutes themselves.

I think that the odyssey of the present legislation is a strong argument for Justice Scalia's position. One of the interesting things about this particular bill is that where as with much controversial legislation when a compromise is reached, all kinds of people say we really do not like this bill but we are not going to be able to do any better, therefore, we will support it.

This bill is different in that a whole variety of people have come forward and have expressed support and even enthusiasm for the bill. People as diverse as the administration, on one hand, Senator DOLE, Senator HATCH and, on the other hand, for example, Senator KENNEDY, Senator MITCHELL—all have expressed support. They have all said there is a lot to be said for this legislation.

One of the reasons that this is possible is that there are slightly different interpretations among Members of the Senate and between the Senate and the administration on the precise meaning of some of the provisions in the law. That is not unusual. What courts are for are to interpret what is meant by the Congress in passing laws.

It is very common for Members of the Senate to try to affect the way in which a court will interpret a statute by putting things into the CONGRESSIONAL RECORD. Sometimes statements are made on the floor of the Senate. Sometimes the Senator will say, but for such and such a provision, which I interpret in such and such a way, I never would support this bill. That is one method of trying to doctor the legislative history and influence the future course of litigation.

Another way to do it is to put interpretive memoranda in the CONGRESSIONAL RECORD. These memoranda typically are not read on the floor of the Senate. They are just stuck into the RECORD.

Another way to do it is for agreed colloquies to be signed by various Senators and for those to be stuck into the RECORD. This is what is happening with respect to this bill.

Last Friday, Senator KENNEDY made a speech on the floor of the Senate. He stated his views of what the bill does. Senator HATCH has just made a very extensive speech on the floor. He stated his views of what the bill does.

My guess, Mr. President, is that if Senator KENNEDY would give us his analysis of Senator HATCHS' position, he would disagree with it. If Senator HATCH would give us his analysis of Senator KENNEDY's position, Senator HATCH would disagree with Senator KENNEDY. I might disagree with both of them. I anticipate that I am going to have an interpretive memorandum which will be put into the RECORD signed by the other original six Republican cosponsors for the legislation. That will be our interpretation of various provisions, but it may not be the interpretation of Senator HATCH or Senator KENNEDY or anybody else.

So what I am saying is that Justice Scalia, I think, had a good point in stating that it is risky business to try to piece together from floor statements or from agreed memoranda legislative history which is informative to the court in interpreting the meaning of a statute.

Mr. HATCH. Will the Senator yield for just 1 minute?

Mr. DANFORTH. Of course.

Mr. HATCH. What I have been talking about is not trying to talk about legislative history. I have been talking about the actual word changes and how important they are and basically why the President has come on this bill.

I agree with the distinguished Senator. The Court in this particular matter needs to look at the words that we have agreed to, and I think if they do, they will find that they are significantly different from the predecessor bills.

Mr. DANFORTH. Mr. President, I will simply continue. I see the Republican leader is on the floor and if he wishes to speak, fine, I am not going to take very long.

But I do want to say this: That whatever is said on the floor of the Senate about a bill is the view of a Senator who is saying it. And if it is not written into legislative language, it does not necessarily bind and probably does not bind anybody else, including the 30-some odd cosponsors of the legislation.

We put into the RECORD an interpretive memorandum last Friday afternoon and the interpretive memorandum is said to cover Wards Cove—business necessity, cumulation, alternative business practice. It is said to constitute exclusive legislative history. But yesterday it appeared that we had a difference of opinion among people who had agreed to this as to what the meaning of this is and that the word "cumulation" that was used in the heading of this interpretive memorandum is subject to at least two interpretations.

All agree that cumulation covers the so-called Dothard case relating to combined requirements, such as height and weight. The administration believes that this agreed-to interpretive memorandum precludes further discussion on the floor or further weight being given to people's expressed position on the so-called black box issue; that is, what do you do when you do not really know what is on an employer's mind, or the lost and destroyed records issue.

So the administration thinks that this interpretive memorandum covers those issues.

I do not happen to agree with that analysis of what it means. I think that it does not cover those issues. But what I am saying is that this legislation, the bill itself has a history that goes back over maybe a year and a half. It has been enormously complex putting together legislative language, much less trying to get agreement on the floor of the Senate about legislative history or about interpretive matters that are put into the RECORD.

I believe, Mr. President, we should go ahead and pass the bill. I believe that it will be passed. But I simply want to state that a court would be well advised to take with a large grain of salt floor debate and statements placed into the CONGRESSIONAL RECORD which purport to create an interpretation for the legislation that is before us.

Mr. DOLE. Mr. President, I have but two amendments to offer. One is a technical amendment which has been cleared on both sides.

I understand the majority leader may be coming into the Chamber.

The other is a glass ceiling amendment on which there will be a vote.

Mr. President, I might send to the desk an amendment in the first degree, the first amendment on which I could make my statement and not take any action until Senator MITCHELL or Senator KENNEDY are on the floor.

AMENDMENT NO. 1277

(Purpose: To establish a program for the Equal Employment Opportunity Commission for technical assistance and training)

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1277, to the Danforth Amendment 1274.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following new section:

SEC. . TECHNICAL ASSISTANCE TRAINING INSTITUTE.

(a) TECHNICAL ASSISTANCE.—Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4) is amended by adding at the end the following new subsection:

"(j)(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this title shall not be excused from compliance with the requirements of this title because of any failure to receive technical assistance under this subsection.

"(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.".

Mr. DOLE. Mr. President, the success of the Civil Rights Act will ultimately

depend upon the degree to which it is implemented. The amendment I am offering today will help in that success, by establishing a Technical Assistance Training Institute within the Equal Employment Opportunity Commission.

The role of the Institute will be to ensure that individuals and institutions affected by civil rights laws are receiving information which will help them comply with the law.

During consideration of the Americans With Disabilities Act, a similar provision was added to ensure that technical assistance be an integral part of the law.

The EEOC has done a remarkable job in getting the word out on the ADA through dissemination of information about this important law, as well as through internal and external training for employers as they work toward an inclusive and accessible work force.

The EEOC has utilized a variety of educational and technical assistance programs to inform employers and individuals of their rights and responsibilities as provided in Federal laws against discrimination. In addition, the EEOC has identified and responded to training needs of personnel in other Federal agencies through such mechanisms as the highly acclaimed Federal dispute resolution seminars.

Years of constrained funding and changing priorities have circumvented the development and institutionalization of a solid technical assistance training and staff development program within the EEOC.

Clearly, with passage of the Civil Rights Act, the Agency is faced with new initiatives which will require an expanded technical assistance and training program both internally and externally. A centralized institute will enable the EEOC to better plan, budget, deliver, and evaluate the much needed technical assistance training.

Mr. President, this amendment has been cleared on both sides. It is not a controversial amendment.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. There is no objection to the amendment.

Mr. HATCH. Mr. President, there is no objection on this side.

The PRESIDING OFFICER. Is there further debate? If not the question is on agreeing to the amendment.

The amendment (No. 1277) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1278 TO AMENDMENT NO. 1274

(Purpose: To secure the right of women to be free of sexual assault and violence)

Mr. DOLE. Mr. President, the second amendment dealing with the glass ceiling commission, an amendment I send to the desk, is an amendment to the Danforth amendment in the first degree, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1278 to amendment No. 1274.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, between lines 4 and 5, insert the following:

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

On page 22, line 17, strike "Act" and insert "title".

On page 23, line 15, strike "Act," and insert "title,".

On page 23, line 22, strike "Acts" and insert "provisions".

On page 24, line 6, strike "Acts" and insert "provisions".

On page 24, line 9, strike "Acts" and insert "provisions".

On page 24, line 13, strike "Acts" and insert "provisions".

On page 27, line 15, strike "Act" and insert "title".

On page 28, line 23, strike "Act" and insert "title".

On page 29, strike lines 1 through 16 and insert the following new titles:

TITLE II—GLASS CEILING

SEC. 201. SHORT TITLE.

This title may be cited as the "Glass Ceiling Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" undertaken by the Department of Labor, including the release of the report entitled "Report on the Glass Ceiling Initiative", has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the management and decisionmaking levels in the United States work force;

(B) the underrepresentation of women and minorities in line functions in the United States work force;

(C) the lack of access for qualified women and minorities to credential-building developmental opportunities; and

(D) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which management and decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to management and decisionmaking positions;

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities; and

(8) employment quotas based on race, sex, national origin, religious belief, or disability—

(A) are antithetical to the historical commitment of the Nation to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) PURPOSE.—The purpose of this title is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills management and decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

SEC. 203. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this title as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to management and decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, including—

(A) six individuals appointed by the President;

(B) six individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold management or decisionmaking positions in corporations or other business entities recognized as leaders on issues relating to equal employment opportunity; and

(C) possess academic expertise or other recognized ability regarding employment issues.

(3) BALANCE.—In making the appointments under subparagraphs (A) and (B) of paragraph (1), each appointing authority shall seek to include an appropriate balance of appointees from among the groups of appointees described in subparagraphs (A), (B), and (C) of paragraph (2).

(c) CHAIRPERSON.—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) TERM OF OFFICE.—Members shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code; and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 204. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO MANAGEMENT AND DECISIONMAKING POSITIONS IN BUSINESS.

(a) ADVANCEMENT STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to management and decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to management and decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which management and decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to management and decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to management and decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to management and decisionmaking positions in business.

(b) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the management and decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume management and decisionmaking positions;

(C) compensation programs and reward structures utilized to reward and retain key employees; and

(D) the use of enforcement (including such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(c) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to management and decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 205. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) IN GENERAL.—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to management and decisionmaking positions.

(d) BUSINESS.—For the purposes of this section, the term "business" includes—

(1)(A) a corporation including nonprofit corporations;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in subparagraphs (A) through (D);

(2) an education referral program, or a training program, such as an apprenticeship or management training program or a similar program; and

(3) a joint program formed by a combination of any entities discussed in paragraphs (1) or (2).

SEC. 206. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

(a) INDIVIDUAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 204 and 205, the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 208. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) TECHNICAL ASSISTANCE.—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title. The sums shall remain available until expended, without fiscal year limitation.

SEC. 10. TERMINATION.

(a) COMMISSION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

(b) AWARD.—The authority to make awards under section 205 shall terminate 4 years after the date of the enactment of this Act.

TITLE III—GENERAL PROVISIONS

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 302. EFFECTIVE DATE.

Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

Mr. DOLE. Mr. President, I am pleased to offer an amendment dealing with the glass ceiling.

While there are probably as many definitions of the glass ceiling as there are individuals affected by it, the issue boils down to eliminating artificial barriers in the workplace which have served to block the advancement of qualified women and minorities.

The goal is to ensure equal access and equal opportunity. These principles are fundamental to the establishment of this great Nation and the cornerstone of what other nations and other people consider unique to the United States; namely, the possibility for everyone to go as far as their talents and hard work will take them.

Unfortunately, the American dream may not be as easy for some to pursue as for others. A recent study by the UCLA Anderson Graduate School of Management and the Korn-Ferry management firm found that while women and minorities currently account for over half of the work force, they hold less than 5 percent of upper level positions in the Nation's 1,000 largest corporations. This represents a mere 2 percent increase since 1979. If one focuses the spotlight on the position of chief executive officer of the 500 largest companies in America, only two are women, and only one is a minority.

While there is no right or correct number, and my opposition to any notion of quotas could not be stronger and more deeply felt, the foregoing suggests that artificial barriers exist with respect to the upward mobility of women and minorities.

These conclusions are bolstered by a study, "A report on the glass ceiling initiative," prepared by the Department of Labor and released this past August. I congratulate Secretary of Labor Lynn Martin on the completion of this report, which is an important contribution toward ensuring the demise of the glass ceiling. I also congratulate her predecessor—whose commitment to this issue I have some familiarity with—who initiated and directed the undertaking of the project.

The amendment we are offering today, the Glass Ceiling Act of 1991, seeks to build upon the important work begun by the Department of Labor and reflected in its report.

This legislation establishes the Glass Ceiling Commission, which is provided with the resources and powers to examine those practices and policies in corporate America which impede the advancement of women and minorities.

Second, this legislation specifically charges the Commission with preparing a report for the President and Congress due 15 months after enactment examining the reasons behind the existence of the glass ceiling and making recommendations with respect to policies which would eliminate any artificial barriers to the advancement of women and minorities.

Finally, this legislation provides for the establishment of the "National Award for Diversity and Excellence in American Executive Management" to be made by the President on an annual basis to a business or organization which has made substantial efforts to promote opportunities for women and minorities to advance to top levels.

It is my firm belief and my firm commitment that by raising the national awareness of the existence of the glass ceiling from the assembly line to the board room, by studying why the glass ceiling exists and what holds it up, and finally by having recommendations in hand as to how corporate America can break that ceiling, we will have ensured that everyone has access to the same employment opportunities.

Fairness demands no less; the American dream demands no less.

That is why passage of this amendment is so important, and I urge all of

my colleagues to lend their support so that the important work of the Glass Ceiling Commission can get under way.

Mr. President, I know the amendment has been cleared on both sides.

The PRESIDING OFFICER. The majority leader is recognized.

AMENDMENT NO. 1279 TO AMENDMENT NO. 1278

(Purpose: To create the Frances Perkins-Elizabeth Hanford Dole Award)

Mr. MITCHELL. Mr. President, I commend Senator DOLE for this amendment. It has been cleared, has support on both sides, and I now, on behalf of Senator KENNEDY, send a second-degree amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. KENNEDY, proposes an amendment numbered 1279 to amendment No. 1278.

On page 14, line 7, before the word "National" insert the following: "Frances Perkins-Elizabeth Hanford Dole".

Mr. MITCHELL. Mr. President, the second-degree amendment would name the National Award for Diversity and Excellence in American Executive Management created by the pending amendment after Frances Perkins and Elizabeth Hanford Dole, two very distinguished former Secretaries of Labor.

I believe it fitting and appropriate that this amendment be adopted, and I hope it is cleared on the other side of the aisle.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Utah.

Mr. HATCH. Mr. President, we would not dare not to. I want to associate myself with the remarks of the distinguished majority leader and also add to those remarks that I appreciate the efforts of the distinguished minority leader in bringing forth this amendment, and I concur with Senator KENNEDY in having this additional amendment. Both of these are cleared on this side, and we would be happy to adopt them.

The PRESIDING OFFICER. Is there further debate?

Mr. DOLE. Let the record reflect that I was not aware of the second-degree amendment. I did not promote it or otherwise encourage it, but I am going to vote for it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment offered by the majority leader.

The amendment (No. 1279) was agreed to.

Mr. MITCHELL. I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I request the yeas and nays on the Dole amendment, as amended.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. HELMS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 232 Leg.]

YEAS—96

Adams	Ford	Mitchell
Akaka	Fowler	Moynihan
Baucus	Garn	Murkowski
Bentsen	Glenn	Nickles
Bingaman	Gore	Nunn
Bond	Gorton	Packwood
Boren	Graham	Pell
Bradley	Gramm	Pressler
Breaux	Grassley	Pryor
Brown	Hatch	Reid
Bryan	Hatfield	Riegle
Bumpers	Heflin	Robb
Burdick	Hollings	Rockefeller
Burns	Inouye	Roth
Byrd	Jeffords	Rudman
Chafee	Johnston	Sanford
Coats	Kassebaum	Sarbanes
Cochran	Kasten	Sasser
Cohen	Kennedy	Seymour
Conrad	Kerry	Shelby
Craig	Kohl	Simon
Cranston	Lautenberg	Simpson
D'Amato	Leahy	Smith
Danforth	Levin	Specter
Daschle	Lieberman	Stevens
DeConcini	Lott	Symms
Dixon	Lugar	Thurmond
Dodd	Mack	Wallop
Dole	McCain	Warner
Domenici	McConnell	Wellstone
Durenberger	Metzenbaum	Wirth
Exon	Mikulski	Wofford

NOT VOTING—4

Biden	Helms
Harkin	Kerrey

So the amendment (No. 1278), as amended, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to lay on the table the motion to reconsider is agreed to.

AMENDMENT NO. 1280 TO AMENDMENT NO. 1274

(Purpose: To make technical corrections)

Mr. KENNEDY. Mr. President, I send to the desk an amendment to make technical corrections to the pending Danforth-Kennedy substitute. The technical amendment has been agreed to on both sides.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1280 to amendment No. 1274.

On page 5, line 22, insert "political" after "agency, or".

On page 6, line 16, strike "15" and insert "14".

On page 10, line 13, strike "business" and insert "employment".

On page 12, line 23, strike "this".

On page 21, line 3, strike "sections 1977 or 1977a" and insert "sections 1977 or 1977A".

The PRESIDING OFFICER. Is there additional debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1280) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to lay on the table the motion to reconsider is agreed to.

AMENDMENT NO. 1281 TO AMENDMENT NO. 1274

(Purpose: To allow the Equal Employment Opportunity Commission or the Attorney General to recover damages)

Mr. KENNEDY. Mr. President, I send to the desk an amendment. The amendment would permit the EEOC or the Attorney General to recover damages on behalf of victims of discrimination. This amendment has been requested by the administration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1281 to amendment No. 1274.

On page 7, line 21, insert "the Equal Employment Opportunity Commission, the Attorney General, or" after "subsection (a)(1),".

On page 8, line 2, insert "the Equal Employment Opportunity Commission or" after "subsection (a)(2),".

Mr. KENNEDY. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from EEOC Chairman Evan Kemp supporting the amendment. I understand the amendment is acceptable on both sides.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, DC, October 28, 1991.

Hon. EDWARD KENNEDY,
Chairman, Committee on Labor and Human Resources U.S. Senate, Washington, DC.

DEAR CHAIRMAN KENNEDY: I am pleased to see that an agreement has been reached on the civil rights bill and I congratulate you for your efforts in reaching consensus. However, I would like to bring to your immediate attention a technical drafting error which is of great concern to the Commission.

The bill contains language that could be interpreted to preclude the EEOC and the Attorney General from obtaining victims of intentional discrimination, even though such damages would be available in a private action. I do not believe that is the Senate's intent to place this serious limitation on actions brought by the government and therefore I urge an amendment to the bill that

would make clear that these enhanced remedies can be sought in actions brought by the government on the same basis as in actions brought privately.

The source of the problem is the bill's two different definitions of the term "complaining party" in section 5, which authorizes complaining parties to seek punitive and compensatory damages, and in section 7, which amends the general definitional section of Title VII. Section 5(a)(1) states that compensatory and punitive damages are available "[i]n an action brought by a *complaining party* under section 706 of The Civil Rights Act of 1964 against a respondent who intentionally engaged in an unlawful employment practice prohibited." (emphasis added). The definitional portion of section 5 states that a *"Complaining party"* for purposes of section (a)(1) is *"a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964."* Section 5(d)(1)(A).

On its face section 5(d)(1)(A) would appear to include the EEOC and the Attorney General in the group of "person[s] who may bring an action . . . under title VII" and, therefore, among those complaining parties entitled to seek enhanced remedies. However, the problem is that section 7, which amends the general definitions in Title VII, states that "[t]he term *'complaining party'* means *the commission, the Attorney General, or a person who may bring an action or proceeding under this Title."* Section 7(1) (emphasis added). My concern is that section 7's definition of complaining party, which specifically includes the EEOC and the Attorney General in addition to "a person who may bring an action," could be invoked to preclude the EEOC and the Attorney General from seeking compensatory and punitive damages because those remedies are limited to only "a person who may bring an action or proceeding under title VII." Sections 5(a)(1) and (d)(1)(A). Indeed, the fact that the Senate bothered to create two definitions of "complaining party" would add substantial weight to arguments that the EEOC and the Attorney General are not authorized to seek the enhanced remedies. There is no obvious explanation for why there are two separate definitions other than drafting error or that the Senate meant to exclude the EEOC and the Attorney General from the group of plaintiffs authorized to seek compensatory and punitive damages.

It would undermine the Commission's ability to enforce Title VII and the ADA if private parties, but not the EEOC, are allowed to seek the enhanced remedies. Indeed, if that were the case the Commission might have a duty to refer all cases of intentional discrimination to private attorneys because, by filing suit, the Commission would dramatically reduce the relief available to the victims. This would be true especially in the case of sexual harassment claims; because there is often no back pay at stake in those cases, the only monetary remedy would be compensatory and punitive damages.

I believe that a very simple amendment to the bill could remedy the problem. For example, section 5 could be amended to define the term "complaining party" to mean "the Commission, the Attorney General, or a person who may bring an action or proceeding under this title." That would make clear that the Commission and the Attorney General are not excluded from the group of "persons who may bring an action" and therefore that they are included among those who may seek compensatory and punitive relief. Such a change would, in my opinion, spare the EEOC and the court a great deal of trouble and confusion in the future.

I trust the Commission's concerns will be addressed and that our mutual interest in protecting the civil rights of all Americans will be achieved.

Sincerely,

EVAN J. KEMP, Jr.,
Chairman.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, DC, October 28, 1991.

TECHNICAL AMENDMENT TO S. 1745

To amend S. 1745 to provide that the Equal Employment Opportunity Commission and the Attorney General can seek on behalf of victims of employment discrimination the full range or remedies available under title VII of the Civil Rights Act of 1964 and the American with Disabilities Act of 1990.

ALTERNATIVE I

Section 1977A(d)(1)(A) of the Civil Rights Act of 1991 is amended by inserting "the Equal Employment Opportunity Commission, the Attorney General, or" before "a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964."

Section 1977A(d)(1)(B) of the Civil Rights Act of 1991 is amended by inserting "the Equal Employment Opportunity Commission or" before "a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990."

ALTERNATIVE II

Section 1977A(d) of the Civil Rights Act of 1991 is amended by striking subsection (1) and inserting:

"(1) COMPLAINING PARTY.—The term 'complaining party' shall have the same meaning given such term in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e)."

ALTERNATIVE III

Section 1977A(d)(1)(A) of the Civil Rights Act of 1991 is amended by striking "a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964" and inserting "the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964."

Section 1977A(d)(1)(B) of the Civil Rights Act of 1991 is amended by striking "a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990" and inserting "the Equal Employment Opportunity Commission or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990."

Mr. HATCH. Mr. President, the amendment is acceptable on this side.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1281) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, for the benefit of the Members, we would welcome any of our colleagues who have amendments and we urge them to make that known to the floor managers and Senator DANFORTH. We are eager to move this legislation along in a timely way. We are very hopeful, if there are amendments, that we will be able to dispose of those after reasonable discussion and debate.

So if there are Members who do have amendments, we would urge their presence over here on the floor at the earliest possible time.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair recognizes the Senator from Vermont [Mr. LEAHY].

Mr. LEAHY. Mr. President, there has been a great deal of discussion about matters before us pertaining to civil rights, not the least of which is who will be covered, especially here on Capitol Hill. While those matters are being worked out—and it appears that they will be—I thought I might make some remarks regarding applying civil rights laws to Congress.

Debate on civil rights legislation necessarily focuses on injustice; it focuses on the hypocrisy of tolerating double standards in our society. The civil rights bill is aimed at eliminating these double standards. It is designed to ensure that all citizens have the same rights under law—but also that all citizens have the same obligations under law.

When I first arrived in Washington as a newly elected Senator from Vermont, I was struck by the double standard of exempting Congress from Federal laws that protect employment rights.

It was really alien to anything I had ever experienced in the workplace before I came here. So contrary to advice from many older and far more senior Members of the Senate, I introduced in 1978 a bill that would extend coverage of several important civil rights laws to Congress. It was a simple bill, founded on a simple premise.

It said that Congress, like everyone else in the country, has to be governed by the same law. Congress was not the last plantation subject to rules made by one particular master. The Senate and House represented the very seat of our democracy. I felt it was imperative that Congress, act like a democracy.

So I introduced the bill. I explained on the floor of the Senate why Congress must set an example to the public. I remember it very well. I was in a back row seat as a very junior Member of the Senate at that time. The reaction of the other Senator was not entirely friendly. In fact, as I was leaving

the Senate floor, a senior Member of the Senate came up to me and asked where I was rushing off to. I explained I had a plane to catch back to Vermont. He said, "Good. Why don't you stay there?"

It was not a ringing endorsement of my idea in 1978 to apply the same laws to the U.S. Senate that we apply to the rest of the country. And so the legislation did not get much support back in 1978. But I believed this reform was necessary and I continued to introduce it in a series of subsequent sessions of Congress, much to the chagrin of that same Senator and others.

Now 13 years later, we face the same issue. What we failed to do more than a decade ago has come home to roost. The American public is sending a clear message that this body has to play by the same rules and observe the same laws that we apply to everyone else in the country. In debates over applying the civil rights laws to Congress, the arguments are always raised that procedures for enforcing these laws would be unconstitutional. In fact, some have claimed that applying the civil rights laws to Congress would unconstitutionally subject the legislative branch to the intrusion of the executive or the judicial branches of Government.

Far more fundamental conflicts between the branches have been dealt with for almost 200 years. I give just one example. In a 7-to-1 decision, the Supreme Court upheld the independent prosecutor law in the face of a challenge based on separation of powers. Others have argued that the Congress' immunity for speech and debate precludes the application of a civil rights law to this body. I totally disagree. It is inconceivable to me that the Framers intended the speech and debate clause to give Congress carte blanche to discriminate against its own employees.

The civil rights legislation in the last 75 years represents some of Congress' greatest achievements. They are the landmark laws that protect all individual freedoms in this country. They are laws that should protect all citizens, all employees—not all except those who happen to work for Congress. If these laws are important for the rest of the country, they are also important for us in the Senate. If there is a valid reason to apply these laws in the workplace throughout the rest of the country, there is an equally important reason to apply these laws in the U.S. Senate.

While the compromise on congressional coverage now being discussed is not ideal, it is an important step in the right direction. For the first time, Senate employees will have access to courts to protect their civil rights. I also support the compromise provision that will for the first time extend the application of civil rights laws to the Office of the President. We must continue efforts to extend to congressional and executive branch employees all Federal rights and protections that are enjoyed by other employees.

Congress cannot be above the laws it passes. It must provide to its employees the same protection it requires of other employers. We cannot have a double standard where we say everybody else needs these laws but somehow we do not need them; where we say everybody else must play by our rules but we here in the Congress do not need to play by these rules. We will end this double standard here.

We will also make sure in this legislation that we end it everywhere within the Government. I assume that the White House, which has eagerly asked for the Congress to extend these laws to protect congressional employees, will of course be very happy that the Civil Rights Act of 1991 also extends to protect the employees there.

The idea plays the same in each place. The law should be the same for everybody. But more than just law, Mr. President, we are talking about basic protection, basic protection for employees who have often served really at the whim of those who are in power; whose rights are as great or as little as the individual Members of the Senate might want them to be; as great or as little as people in the Office of the President might want them to be, as great or as little as those who control various aspects of life on Capitol Hill want them to be.

So let us fold the last plantation. Let us grant the same freedoms, play under the same rules, as everybody else in America.

Mr. President, I mentioned that on May 16, 1978, I first spoke about the need for congressional coverage by civil rights laws. I ask unanimous consent that a copy of the speech I gave on this issue on May 16, 1978, be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont (Mr. LEAHY) is recognized for not to exceed 15 minutes.

Mr. LEAHY. I thank the Chair, Madam President.

I might say, incidentally, in my 3½ years in the Senate, this is the first time I have had a chance to address the Chair as Madam President, I state that it is a very pleasant feeling, indeed.

S. 3086—REMOVAL OF CONGRESSIONAL EXEMPTION FROM CERTAIN LAWS

Mr. LEAHY. Madam President, it is regrettable that a list of some of the Congress' greatest achievements in this century is also a source of embarrassment and injustice with regard to the Congress.

The Civil Rights Act of 1964.

The Equal Employment Opportunity Act of 1972.

The Equal Pay Act.

The Fair Labor Standards Act.

The National Labor Relations Act.

The Occupational Safety and Health Act.

The Social Security Act.

The Freedom of Information Act.

The Privacy Act.

Collectively, these laws spell out civil, social, physical, and financial rights and standards for all Americans—almost. It is that "almost" that is the source of the embarrassment and injustice.

The problem is that in enacting these measures Congress proclaimed that what is good and fair for the country is not necessarily good and fair for Congress. In each instance, Congress specifically wrote itself out of the legislation.

I say injustice because Congress and its employees do not share the protection afforded by these laws, and embarrassment because Congress is unwilling to place itself under the same restrictions and responsibilities imposed by the acts.

The purpose of the bill I am introducing today is simple. It removes the congressional exemption from each of the nine laws. It rights the injustice. It removes the source of embarrassment.

Removing the congressional exemption from the Civil Rights Act of 1964 and the bill amending it, the Equal Employment Opportunity Act of 1972, would make Congress subject to the same restrictions upon employment discrimination which apply in the rest of the country. That is not to say it would prevent all racial, religious, or sexual discrimination in employment practices on the Hill, but it would give affected individuals legal redress that they do not presently enjoy.

Similarly, subjecting Congress to the provisions of the Fair Labor Standards Act and the Equal Pay Act would give legal standing to the women who currently, and all too often correctly, charge they are not receiving equal pay for equal jobs.

Both of these laws and their congressional exemptions are currently being tested in the courts. But without changes in the law, they cannot be based upon legal merit and are subject to dismissal on a technicality.

While both Houses of Congress are considering amendments to their rules to make accommodations on these points, there would be no need for rule changes if Congress took the optimum course—joining the rest of the country under the provisions of these Federal laws.

Extending coverage under the National Labor Relations Act to congressional employees seems to me another obvious step. Today, we will begin the debate on the labor reform bill. Those of us who support the bill proclaim it as good for the country. If that is so, why not extend its goodness to our own employees? I am particularly mindful of the many congressional employees in support positions, in the restaurants, in the various maintenance shops, and others. Why is not what is good for management and labor in the rest of the country also good for management and labor in Congress?

The Occupational Safety and Health Act should be mentioned in the same breath. Congressional employees deserve the protection of the act, and we should have to live by the same OSHA standards that we have imposed upon the rest of the country's employers. I doubt that a single Senate office could meet OSHA regulations. Why should we not have to take the same remedial action private employers must take?

With regard to social security, many members of Congress now admit that we made a mistake with the legislation passed year. In

my opinion, not the least of the mistake was the failure to incorporate Congress and its employees into the system. I do not see why this group should be excluded from either the benefits or the tax bite. Individuals in the private sector who participate in voluntary pension programs must also partake of social security. So again I must ask, why not Congress?

Finally, when Congress passed the Freedom of Information Act, we made it national policy and law that an individual has the right to petition the Government for information held by the Government.

When we passed the Privacy Act, we made it Federal law that the Government must place better safeguards on the files it keeps on individuals, including allowing those individuals to see their files and correct erroneous information.

But those rights of individuals do not extend to information or files within the walls of Congress. How is that fair, much less rational?

I might be tempted to say that this is a bill whose time has come, if it were not already so painfully overdue. I want to put my colleagues on notice that I do not raise this issue idly. It will not fade away, at least not as long as I am in the Senate to advance it.

I hope it will win passage through normal means, but should it become bogged down in committee, or fail to be called up expeditiously, I will not hesitate to offer all or parts of it as amendments to relevant legislative vehicles.

Finally, should my list prove incomplete—and possibly it might—I would hope possible additions would be brought to my attention so they might be incorporated into the bill.

Simple equity and fairness demand passage of this legislation. It is time that we in Congress begin to live by the same rules we have set for others. We should no longer allow such a double standard.

Mr. LEAHY. I thank the Chair.

Mr. President, again, I commend those Senators who have been working very hard to craft legislation that really makes sense, makes sense not just to the country but especially to the men and women who work on Capitol Hill, the men and women who are often denied the basic protections of other employees throughout the country, and I am glad to see this important matter moving forward.

Mr. President, I see other Senators who wish to obtain recognition, so I yield the floor.

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I want to rise to, first of all, commend the Senator from Vermont [Mr. LEAHY] for not only the accuracy and timeliness of his remarks but also his leadership on this matter of ensuring that there is no government above the laws of the land that we place on all other Americans.

Like him, I have had a long experience in awaiting this day when we can assure all citizens of our land and those who work for our Government that there is no double standard or dual standard or different standard.

I want to thank those who have worked so hard in achieving this compromise to ensure that congressional coverage of all the laws of the land will ultimately be the law of the land.

My first opportunity of public service was as a congressional aide in 1965 and 1966 when I first met the distinguished Presiding Officer who was serving his country in the Armed Forces stationed here in Washington at that time. I remember as a young congressional aide, responsible for many employees, having to explain that there was a double standard under which some of the basic rights and guarantees available to all Americans under Federal laws were not automatically available to those who served on staffs of the U.S. Congress.

Today, we are going to take that giant step that many of us have advocated, both as congressional aides and now as Members of the U.S. Congress. I am proud to see this day coming when we can put to rest, once and for all, any allegations that somehow there is a different standard for those of us in elected life and those men and women who work for the U.S. Congress who serve in a staff capacity.

I want to thank all of those in both parties, the leadership on both the Republican side and on our side for their efforts in bringing this to fruition. It has had my support now since 1965. We never see the result of so many things that we do in the Congress, and I am pleased that finally we are going to see tonight what ought to be an overwhelming vote to assure all Americans that what is sauce for the goose is sauce for the gander, and we do it with our heads high.

I thank the Chair.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER (Mr. KERRY). The Senator from Colorado is recognized.

Mr. WIRTH. Mr. President, this is a long overdue amendment which I think will get overwhelming support this evening. It is one of those issues I have never been able to explain to people, why in fact rules and laws apply to everybody else and do not apply to us; it is one of those things you cannot explain. But now we do not have to answer that question anymore.

We have also taken some significant steps in the last week relating to the Congress that are parallel to this. We will speak very soon about energy legislation, bringing an energy bill to the floor. We urge the rest of the country to become much more energy efficient and yet ourselves have not done so.

In the Federal facilities bill which passed here last week, however, we dramatically increased the energy efficiency requirements on Congress. We placed in that very important piece of legislation a provision relating to lighting standards so that we can at last upgrade the extraordinarily inefficient lighting of Congress, bring it up to speed to what we know can and should be done throughout buildings all across the country. Again, we should not say to the country one thing and then act in a different way.

Similarly, on heating, we are remarkably inefficient in relation to the way in which we heat these buildings. Every one of us has gone into our office on a summer day and noticed that the heat is on. We have to get in here a very good heating contractor and do precisely the same sort of thing we are asking everybody else in the country to do and that most people are doing, because there is a real premium to do so.

Third in that legislation, we have a requirement related to recycling for the Congress. Last summer I had a page who at the end of the summer wrote a letter to me because she was appalled at the fact that as a page she put out all this material on people's desks—and I see the pages here almost nodding knowingly—and that material seldom was read; it has to be put here for procedural and legal purposes but then disappears, never to be used again. She said why is this not all recycled? A very good question.

We have been trying for a long time. My office has been active in recycling efforts, to get that going across the buildings on the Senate side and on the House side. That is also now required in the Federal facilities bill.

So in the area of lighting, heating, and recycling we are doing just what we are saying to the rest of the country it ought to do. It is about time that we picked up that performance ourselves. So we have done that in the Federal facilities bill and are doing it now in the civil rights bill. I think it is a significant step in the right direction.

I want to, in particular, commend Senator GRASSLEY, who has really been banging on this one for a long time. He was lonely when he first did it, I know, and now we are all probably going to vote for this amendment tonight. It is about time.

Mr. President, I yield the floor.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FOWLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 2:15 P.M.

Mr. FOWLER. Mr. President, in behalf of the majority leader, I ask unanimous consent that the Senate now stand in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:16 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. AKAKA].

The PRESIDING OFFICER. The Senator from Indiana is recognized.

CIVIL RIGHTS ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. COATS. Mr. President, parliamentary inquiry. Are we proceeding back to the discussion of the civil rights legislation?

The PRESIDING OFFICER. That is the pending business.

Mr. COATS. Mr. President, I take a back seat to no one in my support for equal opportunity, regardless of race, ethnic background, or gender. Discrimination, intentional or unintentional, is flatly wrong and should never be condoned. God created all of us as equals. Our Nation was founded on that principle. My faith and my commitment to American ideals require the highest standards of equal treatment, both in the conduct of my own life, and in my legislative service as a representative of the State of Indiana.

But a concern for equality cannot be proven by muddling this important issue with a comfortable and false political compromise.

I rise today to protest a proposal that violates important principles of fairness and leaves employers with little choice but to hire by the numbers or face endless and costly litigation.

I also rise to protest the fact that this is just another in a series of self-serving compromises—compromises not primarily aimed at addressing national needs, but directed at protecting this body and its Members. The Congress, on this issue and others, has refused to make vital choices between conflicting visions. It has formulated, instead, elaborate covers to protect its own interest in self-preservation at any cost.

As some might know, I did not begin my career in politics, and I will not end it there. Public service, for me, is an honor, but also an interruption. I not only intend, but I have pledged, to return to the private sector, and I am convinced that the private sector must be consulted. None of our deliberations are complete without understanding the real issues and debates of Americans. In my opinion, the vast majority of Hoosiers that I represent, and the vast majority of Hoosier employers, are committed to the principle that all people should be hired, promoted and, yes, if necessary, terminated from employment based on the principle of equal opportunity and merit.

It has become an article of American faith, to paraphrase Dr. Martin Luther King, that men and women must be judged not by the color of their skin, or their gender, but by their character, their ability, or by their potential.

In recognition of past patterns of discrimination, many employers have enacted Affirmative Action Programs and consciously attempted to tilt their hiring and promoting decisions in favor of those who are underrepresented. When these better motives fail, our Nation has enacted many laws protecting the rights of minorities and women against those who still discriminate in the workplace. Americans generally support this current approach to civil rights law—with all its burdens—as a necessary bridge between discrimination and a future society of equal opportunity for all.

But now we are presented with a congressional proposal that by its effect would define discrimination in terms of a numerical standard rather than a criminal act made with intention. It replaces individual responsibility with statistical analysis.

And further, a bill that is designed to promote fairness is itself inherently unfair. By setting an award cap on sex discrimination, while none exists for racial discrimination, this legislation discredits itself with a double standard. But this is typical of a process that attempts to balance interests rather than determine real needs. Caps or no caps, the standard should be the same.

For many years, Republicans rejected this kind of liberal solution. We stood on the principle that a truly colorblind society is not an unreachable ideal or outdated utopia. It is the substance of equal treatment under law. Purchasing any goal, no matter how noble, at the price of race-based preference is not compassion, it is injustice. It creates resentment and insults those who refuse to be patronized.

But in this compromise, that conviction has been betrayed. Washington, we are told, can now breathe a sigh of relief. We have replaced quotas with numerical standards. For most Americans, except lawyers who feed on confusion, this is a distinction without a difference. In the final analysis we are still left with race-based preference, not colorblind concern.

You can call it, this civil rights compromise, anything you want. You can spin it until the rest of us are dizzy, but the effect of this legislation is to hire by the numbers. This is not equal treatment. It is political posturing that tries to cover a bad law with noble intentions.

In searching for the explanation, perhaps, in a paradoxical way, we need to look to Clarence Thomas and the process he has just been exposed to. Thomas, a black conservative Republican, also rejected the liberal definition of what the public thinks and what the public needs. It is impossible, they said, for an African-American to reject the liberal line and think like a Republican. It is impossible, they said, for such a person to be elevated to the Supreme Court where his so-called heresy might be transformed into the law of the land.

So they set out to destroy him, by destroying his character. Because they could not get Thomas through the established procedure, they went outside with unsubstantiated allegations of sexual harassment. I need not detail the sorry, soap-opera spectacle that followed.

Though badly wounded, Thomas thankfully survived. He survived because the American people, black and white, male and female, young and old, refused to join in a public lynching.

But now, instead of siding with the strong majority of Americans who believe that the liberal view—the Washington view—is wrong, many feel that we have to appease those groups which lost. So just days after the Thomas circus ended, a so-called compromise was reached. Victory is declared by participants from both sides, political cover is gained, and the American people once again ask the question of the hour in American politics, "What in the world is going on down there in Washington?"

Today, instead of two political parties, with distinctive agendas, we have a system of entrenched political operatives whose primary goal is to offend no one and to stand for everything. The result is that we have offended everyone and stood for nothing. We think we have pulled one over on the American people, and in their confusion, politicians believe they will be retained by the electorate for a lifetime of public service.

It was proven in the last budget agreement, the same kind of false, political compromise we see today. The goal was to soothe internal conflict, not meet external needs. It was to seek the protection of political cover in an agreement where all could claim victory, and none would be forced to claim responsibility.

Well, I think the American people are more perceptive than Washington understands. They are not fooled by a compromise that is intended only to please and protect the Congress itself. And I suspect there will be a lot of surprised public servants when November comes in 1992.

Mr. President, I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. PACKWOOD. I thank the Chair.

Mr. President, I am a cosponsor of the Wirth-Durenberger amendment that would remove the caps that are placed on damages that women can claim for discrimination, for intentional discrimination. I know the argument that is raised: If we allow unlimited damages for intentional discrimination based upon sex, it will kill the bill. This will become a quota bill. The President will veto it, the veto will be sustained, and we will have no bill at all.

First, I never brought the argument that the civil rights bill that we had last year, that we passed and the Presi-

dent vetoed and the veto was sustained, was a quota bill anyway. That is neither here nor there. The President won. The veto was sustained.

We have another bill that he says he will accept if we have this caps provision in it. By caps, we simply mean this: You feel you have been discriminated against in employment. You claim it is on the basis of sex. You sue. And you claim it is intentional discrimination. You win. There is a limit on how much money you can recover. But, under the current law, if you are black and you think that you have been discriminated against in employment because you are black, intentionally discriminated against, and you sue, there is no cap.

You might ask, why the distinction? And the distinction is really judicial rather than Congress. Congress never intended this. The Court interpreted, in a case involving racial discrimination, a post-Civil War law, and said that it applies only to race, it does not apply to other forms of discrimination. Congress never intended this. It was an 1866 law, as I recall.

When we passed our discrimination laws, we were never thinking in our mind of a distinction between race, sex, religion, or anything else. But we now have this anomoly in the law—because of the interpretation of the 1866 statute, which the Court said applied only to race—that there is a distinction. I think the distinction is unjustified. I wish we would remove it.

Interestingly, there is a school of thought, and a Washington Post editorial is one, that says that we should put a cap on damages for racial discrimination. Indeed, this would be equal. Everybody would be treated equally and you would have a cap. That is an argument for another time.

At the moment we are going to pass a bill that allows disparate discrimination in terms of damages. If you are a black and can prove intentional discrimination, there is no limit. If you are not and are attempting to prove discrimination based upon any other basis, there is a limit to damages you can collect. That is not fair and is not, in any sense, equal protection of the laws except for a quirk of statutory interpretation of the Supreme Court.

I, therefore, wish we would go ahead with the amendment. But I realize the principal sponsors and the President and the leadership of the Democratic and the Republican Parties have reached a compromise in order to pass the bill, and this amendment will not be offered at this time. I will be in support of it when it is offered, and I hope that will be soon on another bill. I thank the Chair.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from Arizona is recognized.

THE TAILHOOK ASSOCIATION

Mr. MCCAIN. Mr. President, I take the floor at this moment very disturbed about an incident that has been reported now in the media to have taken place in Las Vegas sometime around September 15, at the so-called Tailhook reunion, a reunion which is led by naval aviators and their supporters. It is a tradition in the Navy. Although it is a private organization, attendance at this gathering is encouraged by the Department of Defense and by naval authorities, both civilian and military, to the point where, Mr. President, flights to this convention, which has now been held for some 35 years, are taken in military aircraft.

Mr. President, in the last couple of days—remember that this convention took place well over a month ago—information has surfaced of some very despicable behavior taking place as far as sexual harassment is concerned at this convention. I refer to a copy of a letter from the president of the Tailhook Association, who is an active duty naval aviator. I ask unanimous consent that the text of the letter be printed in the RECORD.

There being no objection, the text of the letter ordered to be printed in the RECORD, as follows:

THE TAILHOOK ASSOCIATION,
Bonita, CA, October 11, 1991.

DEAR SKIPPER: As President of the Tailhook Association, I wanted to take this opportunity to give you a debrief of the "goods" and "others" of this year's annual symposium at the Las Vegas Hilton while it is still fresh in your mind. Without a doubt, this was the biggest and the most successful Tailhook we have ever had. We said it would be the "Mother of all Hooks", and it was. We had close to 5,000 people in attendance, over 1,500 rooms filled and 172 exhibits. The professional symposium proceeded flawlessly and it appeared the information exchange was excellent. The flag panel was a resounding success with an estimated 2,500 in attendance. The questions were frank, on the mark and often quite animated. Our banquet and luncheon also boasted of incredible attendance and were enjoyed by all. Our very senior naval leadership, including the Secretary and the CNO, were thoroughly impressed and immensely enjoyed their time at Tailhook '91. Additionally, all of our naval aviation leaders and many industry leaders had nothing but praise for the event. We can be proud of a tremendous Tailhook '91 and a great deal of thanks goes to all the young JOs in the various committees that made Hook fly.

But Tailhook '91 was the "Mother of all Hooks" in one other way, and that brings me to the "others." The major "other" of this year's symposium comes under the title of "unprofessionalism," and I mean unprofessionalism underlined! Let me relate just a few specifics to show how far across the line of responsible behavior we went.

This year our total damage bill was to the tune of $23,000.00. Of that figure, $18,000 was to install new carpeting as a result of cigarette burns and drink stains. We narrowly avoided a disaster when a "pressed ham" pushed out an eighth-floor window which subsequently fell on the crowd below. Finally, and definitely the most serious, was "the Gauntlet" on the third floor. I have five separate reports of young ladies, several of whom had nothing to do with Tailhook, who were verbally abused, had drinks thrown on them, were physically abused and were sexually molested. Most distressing was the fact an underage young lady was severely intoxicated and had her clothing removed by members of the Gauntlet.

I don't have to tell you that this type of behavior has put a very serious blemish on what was otherwise a successful symposium. It has further given a black eye to the Tailhook Association and all of Naval Aviation. Our ability to conduct future Tailhooks has been put at great risk due to the rampant unprofessionalism of a few. Tailhook cannot and will not condone the blatant and total disregard of individual rights and public/private property!

I, as your president, will do damage control work at regaining our rapport with the Las Vegas Hilton and attempt to lock-in Tailhook '92. I need you to get these "goods" and "others" briefed to all those who were in attendance under your purview. Further, I need you, as the leaders of our hard charging IOs, to make them realize that if future Tailhooks are to take place, attitudes and behavior must change. We in Naval Aviation and the Tailhook Association are bigger and better than this.

As we plan for next year's Hook, I look forward to hearing from you on any ideas you might have to help eliminate unprofessional behavior during Tailhook '92. This intent is not in any way to keep from having fun. Rather, we have to figure out a way to have a great time responsibly or, we will jeopardize the very future of Tailhook altogether.

Warm Regards.

F.G. LUDWIG, Jr.,
Captain, USN,
President, Tailhook Association.

Mr. MCCAIN. He sent this letter, and in it he talks about events that took place at this convention. He says:

This year our total damage bill was to the tune of $23,000.00. Of that figure, $18,000 was to install new carpeting as a result of cigarette burns and drink stains. We narrowly avoided a disaster when a "pressed ham" pushed out an eighth-floor window which subsequently fell on the crowd below. Finally, and definitely the most serious, was "the Gauntlet" on the third floor. I have five separate reports of young ladies, several of whom had nothing to do with Tailhook, who were verbally abused, had drinks thrown on them, were physically abused and were sexually molested. Most distressing was the fact an underage young lady was severely intoxicated and had her clothing removed by members of the Gauntlet.

Mr. President, I cannot tell you the distaste and displeasure that I have as a naval aviator taking the floor concerning this incident. Additionally, there is report of a Navy lieutenant aide who was at this gathering who was also physically abused.

I believe in attendance of this meeting—I am sure not at the exact location—were senior ranking naval officers and civilian personnel.

Mr. President, I have contacted the Secretary of the Navy demanding a full and immediate convening of a high-ranking panel of civilian and military members in order to investigate this incident. I hesitate to even use the

word allegation because there are several reports corroborating this. I have also talked to the Secretary of Defense. We must address these incidents.

The Navy's official or unofficial participation in the so-called Tailhook reunion must be suspended until such time as this is thoroughly investigated and appropriate action taken for those who are responsible.

Mr. President, there is no time in the history of this country that something like this is more inappropriate, and we cannot allow it. It is unconscionable. And we in the military, who pride ourselves on the equal opportunity that is extended to everyone in the military, should be ashamed and embarrassed—ashamed and embarrassed that this kind of activity went on. And there is no excuse for it.

The first question that I have of the Secretary of the Navy is, if this has been known now for over a month, why has action not been initiated until such time as this became known in the media?

As I said at the beginning of my remarks, it is with great displeasure that I take the floor on this issue. But the American people, the taxpayers and, very important, the women of America who serve in the military, or who are comtemplating service in the military, deserve a prompt investigation and a thorough one; and those who are responsible for these incidents be given the appropriate punishment.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, as others who have spoken here this afternoon have indicated, I too reluctantly support the decision of my good friend, colleague and cosponsor, Senator WIRTH, not to proceed with our amendment to raise the damages available to women who are victimized by intentional discrimination. But as he has said, and others will say, this is not to let anyone underestimate our resolve to change our civil rights laws so that the remedies against discrimination are identical for all citizens.

This is not just an idea whose time has come. This is an idea which is long overdue. Rather than bring it up in the particular set of circumstances in which we find ourselves today, which would result in a clearly misleading vote on the merits of the issue on which we have all worked so long, we accept the majority leader's assurance that we will soon have our day on the floor.

For those who see this as an issue of unequal remedies for women and the disabled, and which is the reality, we must reassure these people and a lot of others that the Senator from Colorado, the Senator from Maryland, both Senators from the State of Minnesota, and others are signed on to this issue of equal rights for all for the long haul. It will be voted on and I believe it will become law.

My regret is that for some American women who seek passage of this amendment, justice delayed will be justice denied.

My first major legislative effort when I came to the Senate in 1979 was the creation of the Economic Equity Act. Its purpose was to end all legislated inequality against women. We found the statute books full of deliberate discrimination on the basis of gender. For 6 years, first Senator Birch Bayh, then Senator BOB PACKWOOD, and I made great strides in eliminating sexual discrimination in the United States Code in pension, estate, tax law, insurance law, and a host of other issues. That effort has been continued in the last 5 years under the leadership of Senators CRANSTON, MIKULSKI, myself, and others. We share a common goal of making this a Government of laws, not of men and women.

But I learned a vivid lesson in the last 2 weeks.

For years we have known two classes when it comes to civil rights protection in the workplace. If you are a member of a racial minority and the victim of intentional discrimination, you can get your case heard by a jury and be awarded compensation, but if you are a woman subject to the same kind of discrimination you cannot. That is wrong.

I have worked with my colleague JACK DANFORTH to help break the impasse which has existed between the White House and the Congress on the civil rights legislation. Part of the negotiation to get remedies for sex discrimination and sexual harassment was to limit compensatory and punitive damages.

But, Mr. President, Anita Hill changed all of that. It was not just the 13,000 phone calls to my office, as overwhelming as that was. For me it has been the dozens of personal stories that have come to me in the last few weeks from women who have been harassed who have not come forward even to close friends until now. It is their expressions of pain and anger that have had an impact on this 57-year-old white male.

The victimization of women is far more widespread than any of us have imagined, and we have to do something, Mr. President, or all of that will just recede into the background where the pain will continue to do its silent damage.

The amendment that we intended to propose would end the second-class treatment of women. The question is not "How much will this cost?" But the question is "Is this the right thing to do?" The answer, unquestionably, is "yes."

Last year, when we passed the Americans With Disabilities Act, we limited the remedies available under title VII and, as the ranking member of the Disability Policy Subcommittee and as the lead Republican sponsor of the ADA, I supported the concept of providing relief to those who suffered from discrimination on the basis of disability. So we provided the disabled with remedies available to those under title VII, with the agreement that parity of remedies would be available when Congress addressed civil rights later in the year—the same remedies ought to be available to women and the disabled as they are available to minorities, to people from other countries, and to people on the basis of age.

The Danforth civil rights bill for the first time provides compensatory and punitive damages to women and religious minorities who are victimized on the job. I think the Danforth bill moves us in the right direction, just not far enough.

Why is it that women and the disabled should have a cap on damages while racial minorities have none? Discrimination is discrimination, whether you are discriminated against because of ethnic heritage or sex.

Can anyone seriously argue that women should not be entitled to the exact same type of relief as a member of a minority group? Mr. President, the issue before the Senate is simply what is equity? What is fair? What is equal protection under the law?

As we heard this morning when we passed the amendment of our colleague, the Republican leader, on the glass ceiling, the workplace in America is dominated by male supervisors, males with power over women; people with power over other people.

Are we in the U.S. Senate—an institution that is 98 percent white males—going to stand here and tell the women of this country that they have to endure abuse in the workplace and that if they have the courage, and yes, it takes courage, to sue their employer, that they are not entitled to receive the same relief in court that other victims of discrimination are entitled to?

Mr. President, this Senator for one, will not tell women they are to be treated unequally in any setting—neither in the workplace nor in the judicial system.

We are compromising today because it has taken us so long to get all the parties on board this legislation. But another day will come, and this Senator is committed to equality of remedy on that day for all victims of discrimination.

ORDER OF PROCEDURE

Mr. DURENBERGER. Mr. President, I ask unanimous consent that I might proceed as though in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE 1991 WORLD SERIES

Mr. DURENBERGER. Mr. President, at this particular moment there are 65,000 of our constituents jamming something called the Metrodome in our hometown to celebrate a whole series of events that culminated late on the evening of last Sunday.

Mr. President, Thursday the city of Washington will play host to the World Champion Minnesota Twins. The Nation's No. 1 baseball fan, President George Bush, will receive the Twins at the White House Thursday afternoon. Over lunch time, the Twins will be on Capitol Hill for a luncheon reception.

For the information of my colleagues I will be presenting a resolution on Thursday morning congratulating the Twins and the Atlanta Braves on a remarkable World Series. I ask that the text of that resolution appear at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RESOLUTION CONCERNING THE 1991 WORLD SERIES

Whereas baseball fans around the world have been treated to the most exciting and well-played World Series in history;

Whereas this was the first World Series ever pitting two last-place finishers from the previous year;

Whereas both teams received tremendous support from their cities and from fans around the country and the world;

Whereas the Atlanta Braves showed amazing skill and grace under pressure, both in the series and throughout the season;

Whereas the Minnesota Twins put on a remarkable display of total team baseball, combining outstanding pitching, great defense and timely hitting;

Whereas Twins mainstays Kirby Puckett and Jack Morris performed like superstars they are and were supported by a succession of different heroes every night;

Whereas the Twins are one of the most respected organizations in professional sports through the good work of owner Carl Pohlad, general manager Andy McPhail and coach Tom Kelly;

Whereas the entire series was conducted with the highest level of athletic skill, personal character and sportsmanship: Now, therefore, be it

Resolved, by the Senate of the United States:

That the Atlanta Braves and the Minnesota Twins be commended for their play and the credit they have brought to "our national pastime"; and

That the Minnesota Twins are congratulated for being the 1991 World Champions of baseball.

Mr. DURENBERGER. Mr. President, I will read it now, and I will be back Thursday morning again to remind those folks who cannot get inside the Metrodome right now and would love to see baseball. I do not know how many people have asked me: Did we ever want to give up our baseball team and send them home, which means send them back to DC. Not in my lifetime, and certainly not in the lifetime of the Presiding Officer, presiding at this time.

RESOLUTION CONCERNING THE 1991 WORLD SERIES

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Whereas this was the first World Series ever pitting two last-place finishers from the previous year;

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Whereas the Atlanta Braves showed amazing skill and grace under pressure, both in the series and throughout the season;

Whereas the Minnesota Twins put on a remarkable display of total team baseball, combining outstanding pitching, great defense and timely hitting;

Whereas Twins mainstays Kirby Puckett and Jack Morris performed like the superstars they are and were supported by a succession of different heroes every night;

Whereas the Twins are one of the most respected organizations in professional sports through the good work of owner Carl Pohlad, general manager Andy McPhail and coach Tom Kelly;

Whereas the entire series was conducted with the highest level of athletic skill, personal character and sportsmanship: Now, therefore, be it

Resolved, by the Senate of the United States:

That the Atlanta Braves and the Minnesota Twins be commended for their play and the credit they have brought to "our national pastime"; and

That the Minnesota Twins—

The line that our colleagues from Georgia cannot deliver therein in the resolution—

are congratulated for being the 1991 World Champions of baseball.

Mr. President, for me, like most of my colleagues, the game of baseball is the object of fascination and even awe. Most of us, if we could choose, would rather be able to hit a home run, turn a double play or throw a split finger fast ball than pass bills or make speeches. It will be a thrill for us to be able to spend a day with those who do.

TRIBUTE TO LARRY R. FREDRICKSON

Mr. DURENBERGER. Mr. President, we Minnesotans are proud of many things: our lakes; our small towns; our clean, liveable cities. But the reason Minnesota is such an extraordinary place is the talent and generosity of the people who make their homes there.

This past weekend many of us were greatly saddened to hear of the death of a remarkable Minnesotan, Larry Fredrickson.

Like many of Minnesota's leaders, Larry came to the Twin Cities from a rural community; Larry was born in Albert Lea, near the Iowa border. He was educated at Macalester College in St. Paul and New York University Law School.

After a brief law career, he went to work at the Minnesota State legislature, serving as a counsel to the State house and then the State senate. There he earned a reputation for both technical ability and the ability to get things done, which do not often reside in one person. He drafted Minnesota's Comprehensive Health Insurance Act of 1976, which has been used across America as a model for State insurance regulation.

Larry's legacy was not just in legislation. He was friend and mentor to dozens of Minnesota policymakers and administrators. His unique commitment to public service and excellence in governing now lives on in many people of responsibility. Minnesota is a better, healthier place because of Larry Fredrickson's life, and it will continue to be because of the example of leadership that he provided for all of us.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DURENBERGER. Mr. President, I have been informed that I did not read the totality of my resolution. First, I ask unanimous consent that I might proceed for 1 minute as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE 1991 WORLD SERIES

MR. DURENBERGER. Mr. President, I have been informed that I did not read the totality of my resolution.

As we know, a baseball team like the Minnesota Twins must have two Senators to represent them. Most States do. This particular ball team sure does.

As a matter of sort of public record, which might not have been obvious to the 55,155 people that showed up every night for practically all of the home baseball team season, the Republican Senator from Minnesota and the Democratic Senator from Minnesota cheered together from practically the same seats in the baseball stadium, just proving that, fortunately, there is very little politics in the support of the Nation's pastime in our community.

So I ask unanimous consent that it be made clear that the resolution which I have introduced today, which I

will ask to be acted on on Thursday morning of this week, expresses the joint sponsorship of my colleague from Minnesota, Senator WELLSTONE, as well as my own sponsorship.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CIVIL RIGHTS ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. DANFORTH. Mr. President, one of the notable aspects of the past year and a half has been the tremendous commitment that various Senators on my side of the aisle have put into the issue of passing the civil rights legislation, and the outstanding work of the staff members of these Senators. There would be no way to count up the hundreds of hours of time over a year and a half devoted to civil rights legislation. Day after day, for very long days, Senators met—and especially the staff members of the Senators met—trying to put together legislation that could be enacted. I marveled at the patience and the hard work of the people who were involved.

I would like to pay special tribute to those Senators who are cosponsors of the underlying bill: Senators JEFFORDS, SPECTER, CHAFEE, DURENBERGER, COHEN, and HATFIELD, all of whom have been a pleasure to work with in trying to bring this legislation to the floor.

The staff members formed a virtual fraternity, and I do not know that I have ever seen a situation in which there has been such close coordination and mutual respect among staff members as was the case here.

I would like to pay my respects to Reg Jones of Senator JEFFORDS' staff; Richard Hertling of Senator SPECTER's staff; Amy Dunathan of Senator CHAFEE's staff; Steve Sola of Senator DURENBERGER's staff; Kim Corthell of Senator COHEN's staff; and Doug Pahl of Senator HATFIELD's staff.

Especially, Mr. President, I want to express my gratitude to two people on my staff who got me into this business about a year and a half or so ago. I sometimes wondered whether it was a good decision or not. Now I think it was a very good decision.

This is major legislation. What we will pass on the floor of the Senate, unless it is gummed up by amendments, will be agreed to by the House. It has been agreed to by the President, and it will become law.

My legislative director, John Chambers, and my legislative assistant, Peter Leibold, have worked endless hours over a year and a half trying to reach agreement on civil rights legislation. Throughout this period, they have not only been hard workers, they have been very perceptive. They have shown great diplomatic skills in working with a variety of people, and I can say that in the time I have served in the Senate, I have never seen finer work done by anybody on any Senator's staff than has been done by John Chambers and Peter Leibold on my behalf. I am grateful to them for a job very well done.

I might say that, yesterday morning, Peter Leibold, for the first time, became a father. His son, Brian McCloskey Leibold, was born at George Washington Hospital yesterday morning and weighs 8 pounds, 1 ounce. It has been a pretty active week for him. I am very grateful to both of them; they have done superb jobs. The accomplishment of this legislation would not have been possible without their very, very able work.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANFORD). Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, I rise today to express my support for what is now termed the Danforth civil rights bill. I see the distinguished Senator from Missouri is here. I supported last year's civil rights bill and I support this year's bill.

I am amazed at the President's ability to declare that the new compromise bill is not a quota bill. Last year's bill was not a quota bill and the Danforth bill is not a quota bill. The difference between these bills and this new compromise are negligible. What has changed are the circumstances.

I do not believe the President or his advisers ever truly believed these bills were quota bills. They used the quota issue for political advantage. They saw it as a potential campaign issue to be used against—yes, that is right—the Democrats. But now the wind has changed and with it so has the President's claim that civil rights legislation creates quotas.

The controversy over civil rights legislation has been boiled down to two issues. The first involves the need to overturn the 1989 Supreme Court decision, Wards Cove Packing Co. versus Atonio. The second involves providing damages in cases of intentional discrimination. I would like to discuss both of these issues.

The Civil Rights Act of 1964, in particular title VII of that act, provides that: "it is an unlawful employment practice for an employer * * * to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." The Supreme Court in its 1971 decision, Griggs versus Duke Power, held that title VII prohibits not only intentional discrimination, but also employment practices which are fair in form but discriminatory in operation. For example, in Griggs the Court struck down the Duke Power Co.'s requirement for a high school diploma as a condition for employment as a janitor.

In Griggs, the Court required the employer to show that its employment practices which have a disparate impact are required by business necessity. Business necessity was defined in Griggs as having a manifest relationship to the employment in question. Until 1989, this was the standard in all disparate impact cases. Once an employee showed that an employer's practice had a discriminatory impact, the employer had to show that the particular practice was required by business necessity. The burden was on the employer. For 18 years, no one ever complained that this required employers to impose any type of quotas in the workplace.

The playing field changed dramatically in 1989 with the Supreme Court decision Wards Cove Packing Co. versus Atonio. This case has made it much harder for employees to win disparate impact cases. It is one of the main reasons this legislation is before us today. We are here to change what the Supreme Court held in the Wards Cove case. Wards Cove switched the burden of proof from the employer to the employee. It requires the employee to show that the employer's practice, which caused the disparate impact, was not required by business necessity. In addition it changed the definition of business necessity requiring only that the practice serve, in a significant way, the legitimate employment goals of the employer. Thus, employment practices no longer had to be job related.

Defining "business necessity" has been the battlefield for the debate on quotas. The President claimed that the definition of business necessity in last year's civil rights bill, which he vetoed, and in the Danforth bill this year would result in employers hiring by the numbers to avoid litigation. The argument was made that no employer would be able to satisfy the burden of proof that their employment practice was required by business necessity. But now, out of the blue, the President says the new language will not require quotas. This is disingenuous at the very best.

The final compromise language does not define business necessity. Instead, it requires employers to demonstrate that the challenged practice is "job related for the position in question and consistent with business necessity." Business necessity and job related are to be interpreted as they were under case law developed over the years prior to the Wards Cove decision.

The compromise does not change the burden of proof. Just like the Danforth bill, which the President called a quota bill, it returns the burden to the employer to demonstrate that the practice is required by business necessity. The difference is that the Danforth bill defines business necessity. In the case of employment practices that are used as qualification standards, employment tests, or other selection criteria, the challenged practice must bear a manifest relationship to the employment in question. All other practices, including promotional practices and workplace rules, "must bear a manifest relationship to a legitimate business objective of the employer." Arguably, the standard in Danforth is less stringent, because the compromise language would require all practices to be job related, while the Danforth bill would only require hiring practices to be job related.

It is clear the President has used the quota argument to advance what his advisers saw as a clearly partisan issue. A so-called wedge issue, which would reflect badly on the Democrats. But now, with the election results in Louisiana, there is a clear desire on the part of the President and his advisers to distance themselves from fellow Republican David Duke and his views on race relations. Now the President sees a political advantage in supporting a civil rights bill. So is it a quota bill when it is to his advantage and not when it is not? The American workplace deserves better.

This leads to the second major controversial issue in this bill, the need for damages in cases of intentional discrimination. For the business community the real issue in this debate has been over damages. The business community latched onto the quota argument to defeat the bill, but their real fear has been allowing damages for women, religious minorities and the disabled. They have advanced the argument that the bill's provisions for jury trials and money damages, in addition to the strict definition of business necessity, will compel employers to adopt quotas to avoid the risk of litigation.

Anybody who has been in business, and I have, knows that litigation is always a risk that you have. And you always should think about what the law is so that you are not in violation. But thinking about how to comply with the law is not in fact a quota.

I feel strongly that damages in cases of intentional discrimination are necessary. Damages are intended to place the injured party, inasmuch as possible, in the same position he or she would have been in the absence of the discriminatory act against the person. During the past few weeks, women from all over the country, in all walks of life, have come forward with stories about sexual harassment. It was clear before, and it is even clearer now that damages are needed to right these wrongs as well as provide strong incentives against such behavior.

Victims of intentional discrimination should be treated fairly and equitably. Currently, only victims of intentional race discrimination are able to seek compensatory and punitive damages for the discrimination they might suffer. Women, certain religious minorities and the disabled are severely limited in the remedies they can receive.

Title VII's remedies are limited to reinstatement to the job, back pay if the victim can prove lost wages, and/or court orders against future discrimination by the employer. Title VII does not provide compensation for other harm attributable to the discrimination, such as medical injuries and their associated costs, emotional distress, or losses, such as loss of a house or car because payments were missed due to discriminatory discharge from the job.

That is real life. That is what happens in the workplace, if employers are irresponsible.

Title VII fails to address the needs of victims who do not wish to return to their jobs, who suffer medical and psychological harm, or who suffer out-of-pocket expenses because of the harassment from their employers. The need for damages for all victims of intentional discrimination is clear, and a bill that does not provide for that is really unfair.

Opponents of the damages provisions argue that it will subject employers to enormous liability and put them out of business. A recent study completed by a Washington, DC, law firm, at the request of the National Women's Law Center, challenges this assertion. This study shows that monetary awards under section 1981 for victims of intentional racial discrimination has not led to unlimited awards and bonanzas for lawyers. The study which covers a 10-year period, found that in over 85 percent of cases, no damages at all were awarded. Of the remaining cases where there was a monetary award, the average award was about $40,000 and in only three cases were the damage awards more than $200,000. I do not think that demonstrates something that is out of control or something that is putting business out of business.

I am concerned about the caps placed on damages under both the Danforth bill and the new compromise before us today. A victim's ability to recover damages for harm caused by intentional discrimination should not be artificially constrained based upon a presumption about the employer's ability to pay. A victim should be able to recover the full cost of the losses they suffered because of the discrimination exercised against them. It is for this reason I believe compensatory damages should not be restricted in any way.

An adequate damages remedy in title VII will deter employers from discrimination and encourage the settlement of cases. It will send employers the message that all forms of illegal, intentional discrimination are not to be tolerated in this society. It is for these reasons that I urge the Senate to lift the caps on damages. I understand that the compromise includes cap on damages and lifting the caps will not be part of the compromise. But, I understand there will be a chance to revisit this issue in the near future.

I also would like to express my support for applying the rights and remedies of our civil rights law to Congress. I realize the separation of powers issue and the problems that this could pose here. But the fact is that the public wants us to treat ourselves like we treat them and I do not know how else to address that but to apply this legislation to ourselves.

There may be a compromise afoot on the issue of applicability of the Civil Rights Act to Congress. I compliment the majority leader and others who are attempting to find a way that will preserve the constitutional separation of powers and also give some assurance that we are aware that, yes, there can be civil rights violations within this body.

Mr. President, it is about time we face up to this problem, that Congress needs to apply the same law—if it is constitutional—to itself that it applies to everyone else in society. So I hope the compromise can be put together. I sincerely believe this bill is the best we can do. Though it does have a cap on damages, and though I support taking that off, we are really here to try to put together the best bill we can.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I want to congratulate the distinguished Senator from Missouri for his tenacity in pursuing the legislation which is before us today. It has been one of the most extraordinary legislative performances that I have had the privilege of observing in my 7 years in the Senate, and I think we are all grateful to Senator DANFORTH for his efforts.

I also want to congratulate the President of the United States for hanging though in an atmosphere which was quite difficult and getting what he believes to be a measure which will not bring about the use of quotas in the workplace.

Mr. President, having said that, for those of us who were not a part of the

negotiations on this bill over the last year and a half, to be, in effect, shut out now that the measure has come to the floor when we have amendments that we feel are worthwhile, that do not in any way damage this fragile compromise that has been put together by the Senator from Missouri and others, it seems to me is not fair.

I will shortly be offering an amendment that I think strengthens this bill and does not in any way damage the various balances that have been brought to bear here, the fragile compromise that has been put together. In fact, it does not in any way, Mr. President, damage that.

This is not a troublesome amendment. This is not an amendment designed to do any damage to the bill, to create any consternation or concern. This is, in fact, Mr. President, an amendment that will clearly strengthen the civil rights bill of 1991. It is a provictim amendment. It will put more money in the pockets of those who are the victims of discrimination than if this legislation passed as it is currently enacted.

So, Mr. President, I hope that I will not sort of be mindlessly shut out with this good idea, simply with the argument that any change at all in this legislation somehow dooms it. With all due respect to those who may make that argument, it is hard for me to believe that even a change which does not in any way adversely affect the balance of this bill at a time when Congress is going to be around for at least another month is somehow going to torpedo this worthwhile measure.

So it is with those observations in mind, Mr. President, that I would like to make some comments about the general area of tort reform and the need for that in our country, and then I will comment on the specific amendment which I will shortly send to the desk.

Mr. President, as worthwhile as this bill may be, I think all will agree that in many respects it is yet another lawyer's lottery bill. The amendment that I am going to offer a little bit later will provide some consumer protection, if you will, as a useful addition to the civil rights bill of 1991.

As America's business men and women brace themselves for what might be called "Operation Litigation Storm" that will follow enactment of this bill, many lawyers across the country, of course, are salivating. If we all received a percentage of the litigation this bill will create, frankly we could retire.

It is no wonder that America has 70 percent of the world's lawyers, something the Vice President recently pointed out. Congress is adept at keeping them busy. We passed a litany of lawyer relief bills and many, many more wait in the wings. Franklin Roosevelt created jobs programs that put Americans to work building roads and infrastructure. Dwight Eisenhower put people to work on the Interstate Highway System. John F. Kennedy put young Americans to work with the Peace Corps, helping needy people in foreign countries. The modern Congress creates legislation that puts lawyers to work creating lawsuits and red tape.

Mr. President, we should be creating jobs for America's unemployed coal miners and auto workers, not overpaid lawyers.

I have repeatedly introduced comprehensive tort reform legislation to restore some balance to our civil justice system. These efforts, I am proud to say, have landed me on the American Trial Lawyers Association 10 most wanted list, a distinction of which I am quite proud. They even went to the extreme of breaking the law in my last race, funneling $100,000 into the Kentucky Democratic Party to buy ads against me. Basically, ATLA put a contract out on me and anyone else who opposes their self-serving lobby.

What so offends ATLA is that I have worked to put fault back in the civil justice system, basic fairness; you should have to do something wrong, for example, to be held liable. I have worked to abolish joint several liability, penalize frivolous suits, and provide less expensive and faster ways to resolve legal disputes. This is what ATLA finds so offensive.

Clearly, in this instance, the special interest of ATLA does not coincide with the public interest to put sanity back into the civil justice system.

I might say, Mr. President, I do not support every single suggestion people have made to change the civil justice system. I used to be chairman of the Court Subcommittee on the Judiciary Committee back when my party was in the majority in the Senate. As a result of many hearings that we held on the subject of tort reform, I came to the conclusion that I did not support caps on damages, something that is a part of this underlying bill.

I would have supported, for example, had it been offered, the Wirth amendment to take caps off damage suits with regard to sexual harassment. But ATLA requires that you be 100 percent in favor of the status quo. Any change whatsoever they do not want.

Two years ago, I introduced the Lawsuit Reform Act, comprehensive tort reform legislation that was supported by an extraordinary coalition of diverse organizations. The coalition consisted of volunteer organizations, health care providers, educational associations, local governments, law enforcement organizations, professional groups, and small businesses.

These groups share a common affliction: A civil justice system run amok. They support my comprehensive bill because it addresses the concerns of all Americans, not just those of a narrow interest group.

Mr. President, comprehensive tort reform such as I introduced 2 years ago protects both the victims of wrongful injuries, who have a right to fair compensation, and as I said earlier, including no limits on damage recoveries, and the victims of wrongful lawsuits.

The Lawsuit Reform Act, which I will shortly be reintroducing, does the following:

First, it abolishes the doctrine of joint and several liability, so that the defendant's share of the damages is proportional with the share of responsibility for causing the harm.

Second, it would require the loser of any civil action covered by the bill to pay the legal costs of the winner up to a reasonable limit unless—and, I repeat, unless—the loser is legally indigent. Certainly, poor people should not be having to bear the costs of a lawsuit if they lose.

Third, it would prohibit a person from suing others if the person was under the influence of illegal drugs or alcohol and this condition was over 50-percent responsible for the injury.

Fourth, it would provide that awards for damages in product liability suits will be offset by payments form workers' compensation programs, and allows for a right or subrogation.

Fifth, it limits the statutory liability of local governments under 42 U.S.C. 1983 except in bona fide constitutional rights cases.

Sixth, it promotes alternative means of dispute resolution.

Mr. President, these six provisions would go a long way toward restoring balance and reason to our Nation's civil justice system, a civil justice system that is currently crushing America's volunteer spirit, driving up health care costs, reducing educational opportunities, cutting essential services of local governments, and making America less competitive in the world marketplace.

Mr. President, there has been a lot of talk around here lately of the terrible injustice of unemployment. We are awash in bills to stimulate the economy. One of the areas we should be looking at is tort reform to alleviate this terrible drag on our economy, the litigation crisis in the civil justice system.

Put another way, the lawyer's tax is costing America jobs. It is costing consumers billions of dollars, and it is robbing consumers of products that, although better than existing products, do not have an established legal history and therefore are too risky to put on the marketplace.

Mr. President, the laywer's tax accounts for 95 percent of the cost of child vaccines, a third of the cost of a stepladder, and it adds a surcharge of $300 onto a bill that parents pay to have their baby delivered, if they can

find a doctor willing to take the liability risk. There is no sense in maintaining the status quo, unless you are more concerned with the economic well-being of trial lawyers than of the American people.

Mr. President, while I believe our Nation needs comprehensive tort reform, for the sake of the debate at hand over the civil rights bill, the amendment I am going to send to the desk is not comprehensive tort reform. It is extremely modest in scope. Further, my amendment is totally focused—and, I repeat, totally focused—on consumer protection. It makes sure that plaintiffs get their money's worth and their fair share when they seek legal counsel.

My amendment will apply only to actions brought under this bill, the civil rights bill, and would do the following: No. 1, it would limit attorneys' fees to 20 percent of the total award, which tracks the Federal Tort Claims Act.

Let me elaborate. For years, under the Federal Tort Claims Act, there has been a cap on fees for the lawyer for the plaintiff of 25 percent. There is a percent for this. In this particular bill, of course, we have capped the recovery for women plaintiffs. It seems to me only appropriate that we cap the lawyer's fees so that the victims of discrimination can get more of the damage money.

No. 2, my amendment would require an up-front estimate of how much the lawyer is going to charge the plaintiff to bring the suit, including any amounts that will be charged even if the plaintiff loses the case.

No. 3, it would require up front disclosure of the lawyer's hourly rates and give plaintiffs the right to choose an hourly rate over the contingency fee arrangement.

No. 4, it would provide plaintiffs a private right of action against their lawyers if they do not comply with these provisions.

Mr. President, these are not draconian measures. They are modest provisions to ensure that this bill primarily benefits citizens whose civil rights have been violated, not lawyers seeking to cash in. This is a consumer protection amendment. This amendment still gives lawyers a pretty good cut of the take, but it makes sure they do not take too big a cut away from these citizens the civil rights bill purportedly seeks to protect.

AMENDMENT NO. 1282 TO AMENDMENT NO. 1274

(Purpose: To provide for a limit on attorney contingency fees, disclosure and estimate of such fees, a private right of action, and hourly rate right under the provisions of the Act)

Mr. McCONNELL. Mr. President, I send this amendment to the desk on behalf of myself, Senator BOND, and Senator DOMENICI, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for himself, Mr. BOND, and Mr. DOMENICI, proposes an amendment numbered 1282 to amendment No. 1274.

Mr. McCONNELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

After section 20 of the Amendment, insert the following new section:

SEC. 20A. ATTORNEY FEES LIMITATION; PRIVATE RIGHT OF ACTION; DISCLOSURE AND ESTIMATES; HOURLY RATE RIGHT.

(A) ATTORNEY FEES.—(1) Notwithstanding any other provision of law, no plaintiffs attorney may charge, demand, receive, or collect for services rendered, fees in excess of 20 percent of any judgment, settlement, award, or compromise concerning any right or interest under the provisions of this Act, or the amendments made by this Act, or the Act amended by this Act.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with a claim any amount in excess of that allowed under this subsection, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than 1 year, or both.

(b) DISCLOSURE AND ESTIMATES.—(1) Notwithstanding any other provision of law, any attorney representing a plaintiff on a contingency fee basis concerning any right or interest under any provision of this Act, any amendment made by this Act, or the Acts amended by this Act, shall provide, prior to any binding agreement for legal services, a complete written estimate of all reasonably likely legal costs, including—

(A) the total percentage amount of the contingency fee that shall be deducted from any court award provided to the plaintiff;

(B) the attorney's hourly rate for legal services, and an estimate of the total number of hours required to conduct the legal proceeding; and

(C) any additional expenses, costs, and fees that shall be charged to the plaintiff or against the court award, and whether such additional expenses, costs, and fees shall be charged regardless of the outcome of the court proceeding.

(2) An attorney representing a plaintiff on a contingency fee basis concerning any right or interest under this Act, any amendment made by this Act, or the Acts amended by this Act, may not charge the plaintiff more than 125 percent of the furnished estimate for additional expenses, costs, and fees, without obtaining the written consent of the plaintiff before the expenses, costs, and fees in excess of the estimate are incurred.

(3) In any action concerning any right or interest under this Act, any amendment made by this Act, or the Acts amended by this Act, before any final determination on damages or awards by the court, the attorney shall furnish the court with copies of the initial written estimate of fees and other expenses, and any written consent forms executed by the plaintiff.

(c) PRIVATE RIGHT OF ACTION.—(1) Notwithstanding any judicial enforcement of any provision of this section, a plaintiff shall have a private right of action to enforce any such provision in the appropriate Federal court, and to recover any amounts appropriated by the attorney in violation of any such provision, as well as interest, court costs, and reasonable attorney fees.

(2) The private right of action provided under this subsection may not be filed 5 or more years after the events giving rise to the action were discovered or should have been discovered.

(d) HOURLY RATE RIGHT.—(1) Notwithstanding any other provision of law, any attorney representing a plaintiff concerning any right or interest under any provision of this Act, any amendment made by this Act, or the Acts amended by this Act, shall provide the plaintiff the option of paying for legal services on an hourly rate basis or a contingency fee basis. No attorney may refuse to provide such legal services on the basis of the plaintiff electing to pay on an hourly rate basis.

(2) Any attorney who violates the provisions of paragraph (1) shall be fined not more than $2,000 or imprisoned not more than 1 year, or both.

Mr. McCONNELL. Mr. President, let me elaborate again. I made extensive remarks about tort reform in general, but that is not what this amendment is. Let me just go over again what the amendment at the desk does. First, it puts a 20-percent limit on fees of the lawyers representing the plaintiffs in the cases covered by this legislation.

That is not unprecedented, Mr. President. There is already in existing law a 25-percent cap on attorney's fees for actions brought under the Federal Tort Claims Act. This is not breaking new ground.

Second, this amendment requires up-front disclosure to the client, up-front disclosure of all reasonably likely costs and fees, including those that will be charged even if the plaintiff loses.

It gives the plaintiff the option of hourly rates, Mr. President. Some plaintiffs may prefer to be billed by the hour rather than entering into a contingency fee arrangement. They may feel that will be less expensive for them, and it seems to me we should have an interest in providing plaintiffs with this option.

Finally, Mr. President, as I said, it provides a private right of action against the lawyer in Federal court if these provisions are not followed.

Let me just say, Mr. President, there are some real savings involved here to the victim. Let me give you some examples of plaintiff's savings under the McConnell amendment.

Let us assume, Mr. President, that the amount awarded to the plaintiff for racial or sexual discrimination was $50,000. The typical plaintiff's lawyer arrangement today would be at least 33 percent. So of that $50,000, Mr. President, $16,500 would go to the lawyer. Under the amendment of the Senator from Kentucky, which we will be considering shortly, with a 20-percent cap, $10,000 would go to the lawyer, for a savings to the victim of discrimination of $6,500.

Let us take another example, Mr. President, assuming the most egregious case allowed in certain portions of this bill, $300,000. That is an amount that has been capped in cases that women might bring under this legisla-

tion. Under the current typical arrangement, the lawyer for the victim would get $99,000 out of the $300,000 award. Under my bill, the lawyer would still do pretty well. He would get $60,000, but the victim of discrimination would get $39,000 more.

Mr. President, that is all the McConnell amendment does. It does not in any way gut the Danforth bill. I intend to vote for the Danforth bill. I understand that it represents a year and a half of effort on behalf of the Senator from Missouri, the President of the United States, and others.

But I must say, Mr. President, in all fairness, does that mean nobody else in the Senate, even if they have a good idea that improves the bill, can be allowed to succeed here today?

I think that is asking too much because most of the Members of the Senate were not involved in these negotiations. Most of the Members of the Senate support the compromise bill. But it seems to me to assume that nothing can improve the bill, is a mistake. And it seems to me, also, that it is inconceivable that anyone concerned about the victims of discrimination would want to oppose an amendment that saves the victim of discrimination a considerable amount of money as a result of the action of the defendant.

This measure, also, does not exactly require the plaintiff's lawyer to work for nothing. I repeat, in a $50,000 damage case, the plaintiff's lawyer is going to do pretty well. Under the current system he would get $16,500, but he would get $10,000 under the McConnell amendment. In a damage case of $100,000, under my amendment, if it were adopted, the plaintiff's lawyer would get $20,000. That is not a bad fee.

Under the McConnell amendment, if the damage award were $200,000, the plaintiff's lawyer would get $50,000—for one case. I suggest that most Americans would think that would be a pretty good fee for one case. And if it were a case up to the caps, a $300,000 case, a female victim of discrimination who succeeds in court, gets the maximum award, the lawyer would still, under my amendment, Mr. President, get $60,000 for one case even after my amendment was adopted. But the important thing is the victim would get $39,000 more.

Mr. President, I hope that my amendment will not be the victim of an effort to rush to completion and keep any other amendments, no matter how meritorious, from being adopted.

I repeat, my amendment does not in any way damage the fragile compromise that has been worked out by the Senator from Missouri, the Senator from Utah, and others.

Mr. President, I hope that my amendment will be adopted, and I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, before making any comment on the amendment, I was wondering if I could ask the Senator a question.

Mr. MCCONNELL. Yes.

Mr. KENNEDY. What would occur if there was a decision by the court that would just provide injunctive relief to a plaintiff? For example, in a sexual harassment case, we know that, prior to this legislation, the only remedy was injunctive relief. A court could award back pay, but if the individual remained on the job, that remedy would not be available. So if an individual brought a harassment charge and was successful, how would the Senator's amendment apply to that particular situation?

Mr. MCCONNELL. My amendment authorizes the use of an hourly fee as an alternative approach to compensation. It seems to me, in those kinds of cases, the victim and the lawyer might well agree that an hourly fee is the proper way.

Mr. KENNEDY. The Senator knows that reasonable hourly fees are already part of title VII. We do not need to take the Senator's amendment for a reasonable hourly fee because, under title VII, that is the way that fees are currently awarded.

Mr. MCCONNELL. Let me ask the Senator, if we could work out the problem that he raises, would he be willing to accept the amendment?

Mr. KENNEDY. I do not know what problem the Senator is getting at, or why he is restricting his amendment to civil rights cases. I have given an example, and explained how historically attorneys have been linked to reasonable hourly rates.

I was waiting as I listened to the Senator from Kentucky for him to describe to the Senate some of these extraordinary circumstances, where civil rights litigators are becoming rich or receiving extraordinary awards. But those illustrations have not been advanced by the Senator from Kentucky.

As a matter of fact, a study was done just last year by the Federal Courts Study Committee, which found that just the opposite is true. Last year this committee—lawyers and judges appointed by Congress to study the Federal court system—noted that "the monetary stakes in [employment discrimination] cases may be so small * * * that, even with the potential to recover attorney's fees, claimants sometimes find it difficult to litigate in Federal court because they cannot find counsel to take their cases."

So the body that was appointed by the Congress and the Senate last session to study this very type case drew the conclusion that even with the existing award to attorney's fees in civil rights cases, there are scores of cases, which they judged to have some merit, that are not being brought because there are inadequate incentives, even with attorney's fees.

I am just interested whether the Senator has a list of any civil rights lawyers who have been trying these kinds of cases and who have been able to make an excessive income.

Mr. MCCONNELL. Mr. President, under this bill, as the Senator knows, under title VII, the cases will not be subject to compensatory and punitive damages. So there will be an opportunity for the lawyers in those cases to make considerable more. But I would make——

Mr. KENNEDY. On that point——

Mr. MCCONNELL. If I may finish, I say to my friend from Massachusetts, I do not understand what his problem is here. I really do not. The only issue involved in this is not necessarily the history of litigation in this particular field, but we are changing the law. What I am saying, Mr. President, is in these cases in the future there ought to be some limit. We are limiting recovery for women who bring cases under title VII to $300,000. Why not limit the take of the lawyer? There is already precedent for this, I say to my friend from Massachusetts, under the Federal Tort Claims Act. What is the problem in limiting how much the lawyer can get and enhancing how much the victim can get? What is the problem with that, I ask my friend from Massachusetts? What problem does he have with that?

Mr. KENNEDY. The point is, I am trying to understand what the nature of the abuse is. Under the civil rights laws, we have a long history with attorney's fees. Yes the Senator cannot give an example, not a single example, of an individual that has been earning an excessive income. We have seen examples in other areas of the law, and even allegations this past week in the Wall Street Journal about the Milli Vanilli case, but he cannot give me any examples dealing with civil rights lawyers. The only part——

Mr. MCCONNELL. Will the Senator yield?

Mr. KENNEDY. I have the floor. The only attorney's fees that can be granted are reasonable attorney fees, as determined by the court. That is the law, and the Senator has not been able to demonstrate where there has been excessive abuse.

I have given him an example: If, an injunction is awarded in a sexual harassment case, what is the attorney going to recover under the Senator's amendment? Nothing.

The second point I want to make is that many of these cases are going to be brought by individuals who want, say, a promotion which they were denied. It may only be a $2,000, $3,000 promotion. Now, there are a lot of people, a lot of needy people, across this country working long and hard, who may be denied a promotion on the basis of gender. Are we to say now that these claims have so little merit that we are

not going to provide a lawyer who takes that case, spends the time, with a reasonable attorney's fee? That $3,000 may mean a lot to that individual, and they may need an attorney to defend their right to that promotion.

What we are seeing, and as the study by the Federal Courts Study Committee found, many of these cases are not being brought, even now. All we are trying to do is to say: Let us provide reasonable hourly rates. That is all.

Mr. McCONNELL. Will the Senator yield?

Mr. KENNEDY. Just a minute. That is all that the courts provide—reasonable hourly rates. That is it. That has been the basis upon which judges have made their awards.

It seems to me that a needy person, who needs that $2,000 promotion, or a $1,500 promotion ought to be able to have their rights adjudicated and be able to receive adequate representation in court. And if it takes some time for a decent lawyer to prepare and try the case that lawyer ought to be able to get a reasonable hourly rate. That is all that we are asking for.

Reasonable hourly rates have been utilized in civil rights statutes for years, and I still wait to hear——

Mr. McCONNELL. Will the Senator yield?

Mr. KENNEDY. Will the Senator permit me to finish? I have the floor, and I will be glad to yield.

I have yet to hear about how this system has been abused. If we have a problem, let us address it. But we have seen how a reasonable attorney's fee has been permitted over the last 20 years. The ability to recover fees has been reduced in voting-rights cases as a result of a recent Supreme Court decision. We are not addressing that. I regret that fact, because that decision effectively cut those out.

But we cannot find where in these individual, intentional discrimination cases—intentional discrimination cases—we are seeing any kind of excessive reimbursement. Whenever a plaintiff receives only injunctive relief, which has been an important remedy in the past, under the Senator's amendment there would be no compensation. So you can wonder—if that is the criterion—whether an attorney might say: I think you have a pretty good case, but you may only get injunctive relief, and I am only going to be able to get 20 percent of any monetary award, so I am not going to take your case. Twenty percent of nothing is nothing.

I think that if the Senator can demonstrate that in title VII cases there is a history of excessive attorney's fees, I would be more than glad to see if we can address it. Does the Senator know how many cases were brought, actually?

Mr. McCONNELL. I was going to ask the Senator——

Mr. KENNEDY. How many cases were brought under the——

Mr. McCONNELL. I want to ask the Senator a question.

Mr. KENNEDY. Mr. President, I have the floor. I am going to make my comments, and I will be glad to hear the Senator. I have just a few additional remarks, and then I will be glad to yield for a question.

Mr. President, I must oppose the amendment of the Senator from Kentucky.

Victims of employment discrimination typically cannot afford attorneys to assist them in protecting their rights. For that reason, the civil rights laws permit victims of job discrimination who prevail in court to recover from the employer who discriminated against them their reasonable attorneys' fees and other litigation expenses.

That rule may not be a popular one, but it is a vitally necessary one. There is no right without a remedy, we learned in law school. Without a meaningful remedy, there is no right at all.

If we are really serious about protecting the right of workers to be free from discrimination on the job, we need to permit job bias victims to be able to obtain lawyers to represent them in vindicating those rights.

Under existing law, the courts have ample discretion to sanction plaintiffs who bring frivolous or vexatious lawsuits; and this bill does not limit that discretion. In the case of *Christiansburg Garment Co.* v. *EEOC*, [434 U.S. 412 (1978)], the Supreme Court ruled that a prevailing defendant in a job discrimination cause under title VII may recover its attorneys' fees from the losing plaintiff, if the court finds that the plaintiff's action was "frivolous, unreasonable or without foundation." And rule 11 of the Federal Rules of Civil Procedure authorizes the Federal courts to require attorneys or parties who file pleadings or motions that are frivolous or not well founded to pay the attorneys' fees of opposing parties.

So under current law, the courts have ample power to punish attorneys or parties who bring or maintain frivolous suits. In fact, in the past year, the Supreme Court has let stand rule 11 awards against a number of well known civil rights lawyers. So these rules are being used to sanction frivolous litigation.

Under current law, courts also have the authority to limit the amount that prevailing parties may recover for their attorneys' fees. The law limits such parties to a—quote—"reasonable"—end quote—attorneys' fee. And the courts have not been hesitant to limit the amount of those fees.

For example, in Hensley versus Eckerhart, the Supreme Court ruled that the extent of a plaintiff's success is a critical factor in determining the proper amount of a fee award. When a plaintiff does not prevail on a part of his suit that is not related to the part on which he does prevail, the Court indicated that plaintiff should not be able to recover the fees expended on the unsuccessful portion of the suit.

So there is no reason to cap attorneys' fees in the law. I challenge the Senator to identify a single plaintiff's civil rights lawyer who has gotten rich in litigating job discrimination cases. We are not talking about securities suits or personal injury cases. These are civil rights cases, and we heard compelling testimony last year that the number of plaintiffs' civil rights lawyers is dropping quickly; none are getting rich litigating these cases.

I ask unanimous consent to have printed in the RECORD an article from the New York Times entitled "Workers Find it Tough Going Filing Lawsuits Over Job Bias." That article documents the fact that victims of real job discrimination very often experience terrible difficulty in finding lawyers to assist them.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 24, 1991]

WORKERS FIND IT TOUGH GOING FILING LAWSUITS OVER JOB BIAS

(By Steven A. Holmes)

ALBANY, GA.—John Henry Smith Sr., a black employee of the Dougherty County Health Department, wanted to sue his employer with a claim of racial bias when he was passed over for a promotion. But, like an increasing number of people who want to file such suits, he could not afford the up-front cost of a lawyer and could not find one willing to take his case on a contingency basis.

He tried several lawyers in Albany. Then he tried in Athens, Atlanta, Columbus and Macon. The last one turned him down two weeks before the statute of limitations on his case was to run out.

YOU EDUCATE YOURSELF

Frantic, Mr. Smith decided to represent himself, though he is a high school dropout with a General Educational Development certificate. So far, by spending late nights in the local courthouse library, reading law books, Mr. Smith has managed to file the necessary court papers.

"It takes a whole lot of time cause you don't know what you're doing," he said. "But you kind of educate yourself as you go along."

As the nation wrestles intellectually and politically with the issue of civil rights, the legal system appears to be growing increasingly inhospitable toward individual race and sex discrimination cases. Lawyers more and more are turning away such cases, say experts in employment law and lawyers representing plaintiffs and employers.

They say the cases are time-consuming, difficult to win and bring far less money than other civil litigation like personal-injury suits, which permit punitive damages.

Lawyers themselves say, moreover, that they face increasingly conservative judges who are bored by, if not downright hostile to, such cases.

While much of the evidence is anecdotal, a survey conducted in May by the National Employment Lawyers Association, a group made up of about 1,000 lawyers for plaintiffs, found that 44 percent of its members rejected

more than 90 percent of the job-discrimination cases that had been brought to them.

Last year, a committee of lawyers and judges appointed by Congress to study the Federal court system noted that the monetary stakes in some job-discrimination cases might be so small that "even with the potential to recover attorneys fees, claimants sometimes find it difficult to litigate in Federal court because they cannot find counsel to take their cases."

Sometimes, but not often plaintiffs who cannot find lawyers receive court-appointed counsel. Sometimes they then elect to represent themselves, though they tend to be unschooled in the complexities of the law.

"They're getting killed in court," Jeanette Johnson, a civil rights lawyer in Dallas, said of the poor blacks and women who represent themselves. "It's like sheep to the slaughter."

Most often, experts say, those who seek to bring such cases simply abandon the thought of getting any redress in the Federal courts.

"What happens is that they end up not being able to enforce their rights," said Lex Larson, president of Employment Law Research, a North Carolina concern that publishes manuals on labor law. "They go out and find another job and forget the whole thing."

HIGH COURT'S EFFECT

Experts say the growing reluctance of lawyers to take on job-bias claims is a trend that was intensified by a number of Supreme Court decisions making it harder for plaintiffs to bring such cases. A bill to reverse these decisions has been stalled in Congress by a dispute over whether it would compel employers to adopt hiring and promotion quotas.

Many lawyers say they are hampered by two Supreme Court decisions. The first, in 1982, limited their ability to bring large and potentially lucrative suits on behalf of whole classes of plaintiffs; the second, in 1989, virtually barred them from winning large monetary awards in race-discrimination suits, except those involving hiring. Claims alleging bias in hiring are a small minority of job-bias suits.

Plaintiffs' lawyers say they end up representing small individual claims brought by poor or working-class blacks or women who often cannot pay their normal rates. If they prevail, they say they often end up squabbling with judges over how much the losing party must pay them in fees.

"It's extremely difficult to earn a living in employment discrimination, virtually impossible," said Martha Pearson, an Atlanta lawyer who last November, after 10 years, quit a firm that represents plaintiffs in job-bias cases and joined a firm that represents local school boards in Georgia.

DIFFICULTY WITH SUITS

Amy Totenberg, an Atlanta lawyer who has been litigating job discrimination for 14 years, said: "* * * and you're looking for someone who has some resources to finance it. So automatically you're looking at upper-middle-class people or middle-class plaintiffs."

Even some lawyers who represent employers acknowledge the difficulty in plaintiffs' winning discrimination suits and the difficulty for lawyers to earn a living handling such cases.

"You don't have the big easy class-action cases you had in the 1970's and 1980's, where you could get a big dollar settlement and attorneys fees over relatively simple issues," said Lawrence Z. Lorber, a Washington lawyer who represents large corporations. "Now, there are testing cases where you need experts and a lot of up-front money. It's an arena where the targets are fewer, the issues are more complex and the litigation takes longer, because the courts are jammed."

Plaintiffs who must fend for themselves in Federal court enter a bewildering world of procedures and jargon that make small-claims court seem user-friendly by comparison.

With legal papers spread before her on a mahogany table, Muarlean Edwards of Albany prepared to represent herself in a job-discrimination lawsuit against a local hospital.

But when a visitor asked her whether the hospital's lawyers had filed a motion for summary judgment, a routine legal maneuver asking the judge to quickly decide the case in the defendant's favor, Mrs. Edwards' face went blank.

"What is that?" she asked. "Is that when they set how much you're going to get?"

BIG BACKLOG IN AGENCY

While private lawyers seem more and more reluctant to take race- and sex-bias cases, the Federal Government is not picking up the slack. In the 1990 fiscal year, the Equal Employment Opportunity Commission, the Federal agency charged with enforcing job-discrimination laws, filed 524 lawsuits in Federal courts. While this is an increase over the 486 suits in 1989, the agency has a backlog of about 45,000 cases that have yet to be even investigated.

Unless the plaintiff cannot find representation elsewhere, current Federal regulations preclude Legal Aid Societies that receive Federal funds from taking on cases, like employment-discrimination lawsuits, that can generate fees for lawyers.

Because of these rules, these agencies concentrate their limited resources on other areas of civil litigation, like family law, welfare rights and landlord-tenant disputes, said Clinton Lyons, executive director of the National Legal Aid and Defenders Association, a group representing Legal Aid Societies. * * * As a result, Mr. Lyons said, lawyers in these agencies tend not to have the expertise to handle job-bias suits.

In contrast to race- and sex-discrimination cases, lawyers say there is little hesitation in taking on clients who claim age discrimination. Those cases tend to be more lucrative because, under Federal law, juries can award monetary damages equal to twice the amount of back pay that was lost because of the discrimination. Also plaintiffs in age-bias cases, who are often white male executives who have lost their jobs as a result of a company cutting management positions, are more attractive clients than blacks, Hispanics or working-class women, some lawyers say.

"Age discrimination is still the white males preserve," said a Washington lawyer who represents employers, speaking on condition of anonymity. "Typically, the plaintiff is a middle- or upper-management employee who has been laid off. They are much more sympathetic figures to juries. More importantly, they make bigger salaries so they can pay the upfront costs of litigation. And, if you win and get a back pay award, the amount the lawyer gets is even bigger."

For now, plaintiffs like Mr. Smith who are walking into court alone must rely on their own common sense and perhaps a sympathetic ear on the bench.

"I hope to keep going until the judge tells me this isn't right, do something else," Mr. Smith said. "I couldn't live with myself if I stopped now."

Mr. KENNEDY. Mr. President, it would be a serious mistake to tie the amount that can be recovered for attorneys' fees to the amount recovered in the suit. A lawyer may be required to put in long hours to assist a woman who was harassed or denied a promotion. It would make no sense to say that just because the promotion was to a job that doesn't pay a lot, the employer should not have to pay the victim's attorneys' fees.

The proposed amendment is inconsistent with our agreement to resist all amendments that would undercut the bill. I urge my colleagues to vote to table it.

(Mr. ROCKEFELLER assumed the chair.)

Mr. McCONNELL. Mr. President, if I may ask my friend from Massachusetts, is he suggesting that never are title VII cases, under current law, taken on a contingency fee and never is the plaintiff charged one-third? That has never happened?

Mr. KENNEDY. No, I am suggesting that, under the law, defendants do not have to pay more than reasonable fees.

Mr. McCONNELL. Mr. President, the Senator from Massachusetts answered my question. There are times under title VII, under existing law, where the fee arrangement between the victim and the victim's lawyer does involve a one-third contingency fee. What supporters of my amendment are saying, in effect, is that is too much for the lawyer, and not enough for the victim. So you do not have to prove that there are lawyers getting rich off of title VII cases to vote for the McConnell amendment.

What I am saying is that any contingency fee arrangement—not just in title VII cases, but in 1981 cases as well—that takes more than 20 percent out of the victim's pocket is too much. That is what I am saying, Mr. President. If any of these fees are more than 20 percent, whether it is a title VII case or 1981 case, that is too much.

My friend from Massachusetts cries for the plaintiff's lawyers. He cries for the plaintiff's lawyers.

I would say, Mr. President, the plaintiff's lawyers will not do badly under the McConnell amendment. I would repeat: Under my amendment in a case in which the plaintiff is awarded $50,000, the lawyer will get $10,000—$10,000 for one case. Under the McConnell amendment, if the damage award is $100,000, under my amendment the lawyer will get $20,000.

The important thing is that the victim gets $14,000 more—the victim of discrimination.

My friend from Massachusetts misunderstands my point. The issue here is not whether lawyers are getting rich or not. That is an issue, but that is not the issue with this amendment. The issue with this amendment is the lawyers are getting too much and the vic-

tims are getting too little. That is the only issue in this amendment. So let us not argue about other things.

We may argue that plaintiff's lawyers are making too much, and I happen to agree with that in a lot of ways but that is not what this amendment is about. That is not what this amendment is about.

This amendment says if the victim succeeds, the victim ought to get more and the lawyer ought to get less. Does that mean the Senator from Kentucky thinks the lawyer ought to work for nothing? Of course not, of course the lawyer ought not to work for nothing. The lawyer is going to be adequately compensated if the McConnell amendment is adopted.

Now caps on contingency fees are not unprecedented. We have it in the Federal Tort Claims Act now for suits against the Government. It is 25 percent. There is no dearth of lawyers out there willing to handle those cases. We have almost as many lawyers in this country as there are ants in an anthill. Fear not, fear not, there will be plenty of lawyers, Mr. President, to handle these cases.

So the Senator from Massachusetts is saying, in effect, let us give the lawyers more. We have 70 percent of the world's lawyers and he is arguing to the Senate there will not be any lawyers to handle this case if they only get 20 percent on a contingency fee basis.

That is absurd, Mr. President, with all due respect to my friend from Massachusetts. That is absurd. There is no dearth of lawyers. We are churning lawyers out of the law schools of America. There will be lawyers frothing at the mouth to handle these cases for 20 percent.

This is not directed against the lawyers. This is directed in favor of the victims of discrimination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I take the floor hopefully to urge the Senator from Kentucky not to persist with his amendment and to withdraw it. Absent success in that effort, to try to the best of my ability to explain to the Senator from Kentucky why when everyone is finished talking on this issue I will make the motion to table this amendment.

I might say that I am in general agreement with the principles that Senator MCCONNELL has stated. I am concerned about the litigation explosion in this country. And Senator MCCONNELL and I have been allies along with Senator KASTEN in particular in fighting the battle against the litigation explosion.

When I was the chairman of the Commerce Committee for the first time we reported out of that committee a product liability bill which had in it a provision relating to caps on damages. That was highly controversial and it was strongly opposed by the American Trial Lawyers Association. But I think we have to take seriously the concern about litigation in this country. When I read in the newspaper the weekend before last of a lawsuit against the Upjohn Co. where a 70-year-old man won a judgment in the amount of $127.6 million for the loss of an eye, that to me is outrageous. Something should be done about it.

I might say that the Presiding Officer, the junior Senator from West Virginia, has been very active in this area as well. Clearly, we have a serious problem.

People say, well, it is inequitable that there are caps in this bill but there were not caps in 1866 when section 1981 of the Civil Rights Act was passed. I am not a historian but I can say that it would be my guess that in 1866 people were not worried about a $127.6 million damage judgment.

It was not an issue for Members of the Senate sitting down and saying how can we figure out a way to treat women or religious minorities as second-class citizens. That is preposterous to think that we would do that. What we are doing is to address an issue that exists now and probably did not exist 125 years ago when we passed section 1981.

What we were attempting to do was to get a handle on exploding litigation and exploding lawsuits. The Senator from Kentucky is exactly right in what he has said about litigation, about getrich schemes, about uncontrollable awards. It is a terrible situation, and we should address this situation and in my opinion we should do it generically. I think that we should bring legislation to the floor of the Senate, over the all-out objection of course of the trial lawyers. We should bring legislation to the floor of the Senate to deal with medical malpractice, product liability, and as much else as we can control and figure out a way to do it and to do it properly.

I have one minor concern with the Senator's amendment and I have one very major concern which is why I so strongly oppose it.

Here is the minor concern. I think that a 20-percent across-the-board cap on attorney's fees is not realistic in this kind of lawsuit. And the reason is that we do have caps in the overall award anyhow. But as a practical matter, the history of cases brought under 1981 for race discrimination are that the damages that are awarded are not very high. I think there are only—I do not have the figures in front of me—a couple cases in the 125-year history of the law where damages exceed $300,000, which is the maximum cap that we have, and I believe that average recovery seems to be something like $38,000 for a plaintiff in section 1981 cases.

Let us suppose that a plaintiff gets a $38,000 award for intentional discrimination; 20 percent of that is $7,600, and my concern is whether lawyers would take that kind of case. So I would say if you want to have a cap on attorney's fees, maybe there should be some sliding scale because if you have a case where there is a reasonable award I do not know if you want the same kind of limitation.

That is really a minor issue because, as I say, as a general principle I think that the Senator from Kentucky is making a valid point when he expresses concern about attorney's fees, and I think he is making a valid point in trying to legislate in order to do something about the litigation explosion.

But my reason for feeling so strongly about this amendment and about other amendments which probably will be offered today is this: Mr. President, for 1½ years I have fought this battle. For 1½ years I have attempted to put together a compromise on civil rights legislation. It has been extremely difficult. It is very, very difficult to put together a bill which is more than mush and which satisfies people on both ends of the spectrum.

This bill is not mush. It is very important legislation. It overrules six different Supreme Court opinions and for the first time provides damages for women and others who have been intentionally injured in title VII cases. It is an important, important piece of legislation.

But it has not been easy to put it together. I cannot count the number of meetings that we have had. I cannot count the number of hours that have been spent over the last year and a half in difficult negotiations with Members of the Senate and with other people who have been interested in this legislation.

For the first time, we had a breakthrough last week. And now we have a bill that the President says he will sign. In fact, the President, when he met with Senator DOLE and me last Friday, was enthusiastic about this bill. The President says he will sign it.

Now we have a bill that has been cosponsored by Senator KENNEDY and Senator HATCH, by Senator DOLE and Senator MITCHELL, on one condition, and that is that the bill is not going to be changed significantly.

Senator MCCONNELL says that his amendment does not go to the heart of the bill. His argument is that this amendment does not change the legislation significantly. What is significant is in the eye of the beholder. Clearly this amendment is opposed by Senator KENNEDY. My guess is clearly it would not be acceptable in the House. That would mean most likely that we would go to conference with the House. That is what we do not want to do. We want to pass a bill which the House will accept and which the President will sign.

My suggestion to the Senator from Kentucky, my great hope, is that he will not persist with this amendment; that he will not open the floodgates with this amendment; that he will wait on this important issue and fight it another day. I would urge him to do that. I do not think that this amendment is going to become law on this bill. I think that this amendment has potential to do damage to this bill. And because we have a rare, as the Senator said, fragile thing in our hands, my hope is that we would get this legislation passed and not bog it down.

So, Mr. President, at the appropriate time, if it is not withdrawn, I will move to table. But my hope is that the Senator from Kentucky, now standing at his desk, is prepared to give me the good news that he will fight this important battle on another day.

Mr. MCCONNELL. Mr. President, as I have stated repeatedly, I have great admiration for the work that my friend from Missouri has put forth in this effort over the last 1½ years. He deserves the lion's share of the credit, if not all of it, from my point of view, for the legislation that is before us. I do not seek to damage the bill. I do intend to persist. The votes may not be here to approve my amendment. I think that is unfortunate, but I have lost before.

Let me just say briefly—and then I am prepared to go to a vote—Mr. President, there is not going to be any dearth of lawyers willing to handle these cases. We have a huge number of lawyers. It is a growth industry in our country. We have 70 percent of the world's lawyers. There is not any question in my mind that the victims of discrimination are going to be represented.

If the damages are as low as Senator KENNEDY and Senator DANFORTH have suggested, then that is an even stronger argument for the McConnell amendment because, frankly, the victim ought to get more and the lawyer ought to get less. Obviously, there is a point beyond which you can go and still have a lawyer willing to work. But we have an overcrowded market. And under the McConnell amendment lawyers are not going to have to work for nothing. They are still going to be very nicely compensated; I must say, much better compensated than most people in America for the same amount of work.

Let me just in closing, one more time, mention what the victim's lawyer would get in cases if the McConnell amendment is passed. If the damage award was $50,000, under the current system, in all likelihood—although there could be an hourly arrangement, as Senator KENNEDY has pointed out—but in all likelihood, under a contingency fee arrangement under the current system, the lawyer would get $16,500. Under my amendment, the lawyer would get $10,000—not a bad fee for one case—and the victim would get $6,500 more.

Let us assume the damage amount was $100,000. If there were a contingency fee arrangement under today's standard operating procedure, the lawyer would get $33,000; quite a lot of money to the typical American. Under my bill, the lawyer would get $20,000—still make $20,000 off of one case—but the victim would get $13,000 more. The victim of discrimination would get $13,000 more.

Let us assume it was a big case, as a matter of fact the largest case allowed with the cap on recovery under title VII, a $300,000 case. In all likelihood, if that were handled under today's standard operating procedure, the plaintiff's lawyer would get $99,000, almost $100,000 for one case, one-third of what the victim of sexual harassment would get. Under my bill the lawyer would still make $60,000 on one case. That is more than most Americans—by far more than most Americans—make in an entire year that the lawyer would get on one case, even after my amendment was adopted. And the most important thing is the victim would get $39,000 more.

Mr. President, it is very difficult for me to understand how adopting this amendment in any way does damage to this bill. In fact, it clearly helps the victims of discrimination.

Mr. President, I think we have probably argued this long enough. I am happy to have a vote as soon as my colleagues are ready to proceed.

Mr. KENNEDY. Mr. President, I will just make a very brief comment. I do not know what value Americans would place on obtaining the right to vote. Are we going to say, well, they could get up to 20 percent attorney's fees? What we have now in civil rights cases is a reasonable allowance.

What would you get in the Runyon versus McCrary case, which was brought under section 1981, and involved the desegregation of a segregated academy? You say, no, no, no, the plaintiffs are not entitled to attorneys' fees. They are entitled to 20 percent of the award. But there is no financial award. Just as there is no financial award when you are given an injunction in a harassment suit.

When I graduated from law school there were 265,000 lawyers. There are now 835,000 lawyers. We all know there are abuses, and all of us want to deal with those abuses.

But there is no evidence that civil rights attorneys are making too much money. Let me just read into the RECORD what Judge Thompson said in Robinson versus Alabama, a civil rights case, a little over a year ago. This is what Judge Thompson observed:

> Of the few attorneys most highly regarded as civil rights practitioners in the State of Alabama, at least three have redirected their energies toward other legal disciplines within the last few years. Their stated motivation was that the civil rights market did not adequately compensate them. Unfortunately, the shift of these experienced practitioners was not offset by an influx of new attorneys willing to fill the void. Young attorneys, equally adept at making the same market comparisons as other practitioners, have also shied away from the civil rights field in favor of other, more lucrative and financially stable specialties.
>
> There has been, as a result, almost a 10% reduction in the number of civil rights attorneys within the state within the past few years. If this pattern continues unchecked, and the evidence before the court suggests that it will unless corrective measures are taken, the day will soon arrive when the state's civil rights bar will be little more than a memory. Ultimately, the real victims of this trend will be the citizenry of Alabama. Without lawyers available to champion the cause of impecunious victims of discrimination, the progress that has been made during the past four decades toward eradicating discrimination from this state will be halted, and the promise of equal treatment and opportunity for all will be but empty words.

Mr. President, if we are able to demonstrate by any example that attorneys who are trying civil rights cases and who would be covered by this legislation are benefiting from the excesses that have been mentioned here on the floor, I would certainly be more than willing to try and address this.

But that case has not been made and is not being made. Quite the contrary—quite to the contrary. If we find that as a result of the damages provision we begin to have the kind of excesses and abuses that the Senator from Kentucky points out, I will be glad to join him at a later time to try and address that.

But let us not, at this time, when we are dealing with the kinds of cases I have referred to earlier in my comments, really undermine what I believe is very important to remedy for millions of our fellow citizens.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, the Senator from Missouri indicated a few moments ago if we made any significant change in this bill, then the likelihood of having a conference would increase. And I think that is true, although I had heard Speaker FOLEY indicate on one of the talk shows on Sunday that he felt the House might be prepared to take the Senate bill.

But I never quite understood—though I want to cooperate, when there is a deal breaker, to defeat that amendment—who makes that judgment. Because I can tell you, the administration already kind of feels there has already been a deal broken between the time the agreement was reached, and then we had a change in legislative history because of a statement made by the Senator from Massachusetts on the floor. And now we are saying: Oh, well, nobody knows what anything means; it

does not make any difference. So I think there has to be some clarification.

If we cannot agree on what is the legislative history—we thought we agreed upon it, and now we are told that any amendment we adopt is going to be a deal breaker. I do not know who makes that determination; whether it is the leadership who makes that determination or the managers of the bill who make that determination, or one Senator makes that determination.

So I think we should resolve that, because there are going to be a number of very troubling amendments in addition to the one by the Senator from Kentucky. I hope that before we vote on this—and I assume there will be a motion to table—that we have some understanding that would, in effect, sort of break this loose arrangement that we had, and some would indicate has already been violated?

Mr. MCCONNELL. Mr. President, will the leader yield on that point? I am mystified, and have not yet heard, on the very point the leader raises, why the amendment that I am offering, which puts more money in the victim's pocket and less money in the victim's lawyer's pocket, in any way goes to the heart of the compromise that has been worked out. I believe that raises a very good point. I cannot understand why my amendment is a deal breaker.

Mr. DOLE. Mr. President, I am just trying to understand myself. I want to cooperate with the leadership. I am a cosponsor of the bill I thought we had agreed to on Thursday. But on Thursday we reached agreement that a two-paragraph interpretive memorandum would be the exclusive legislative history with respect to the Wards Cove case and the issues of business necessity, cumulation, and alternative business practice.

On Friday my distinguished colleague from Massachusetts, Senator KENNEDY, seemed to break or at least contradict this agreement with a paragraph describing his own meaning of the term "cumulation."

Now we have this debate inside—maybe it's inside baseball to most people—but it is something the administration feels rather seriously about. And now we have sort of a free fall—free-for-all on the legislation history. And, so it seems to me, if we are going to start saying, well, these are deal breakers—maybe it is too high. Maybe if you had lowered the rate to 10 percent it would be more attractive.

But I do not think it would be more attractive to the lawyers, or the Trial Lawyers Association. They have a lot of money to spread around, and they do it about 9 to 1, I guess the ratio is.

So I suggest that may be a reason there would be some in the House who would be displeased with this amendment. I will be very candid about it. I think there would be some people on the House side who will say this would not be fair to that association or that group of lawyers.

So, I want the bill to pass. I want the bill to pass that I agreed to cosponsor—without any significant changes, as my friend from Missouri has stated. But I think the administration has a right to be heard, took on what they felt was the deal we reached, and not say, well, it does not make any difference. Maybe it does not, but we have not yet resolved that to the satisfaction of the administration.

So I am happy to cooperate with the managers, Senator HATCH, Senator KENNEDY, Senator DANFORTH, and others, to defeat amendments. And after this amendment, there is going to be another troubling amendment of the Senator from Oklahoma, Senator NICKLES. There is no doubt in my mind if that were adopted, that would lead to a conference. I am just not certain whether this would lead to a conference. Maybe somebody could tell me why it would. But I know the next one would, and I intend to oppose the next amendment even though we have not as a yet resolved the matter on legislative history.

But I think before we conclude action on this bill, we will resolve that to the satisfaction of all the people who met and agreed to what we thought we had agreed to last Thursday.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, maybe I could at least try to shed some light on the various questions that were raised by Senator DOLE.

First, I want to make it clear to my leader that I would certainly not consider myself to be the errand boy for the American Trial Lawyers Association. Far from it. I was the one who was the chairman of the Commerce Committee when we reported out a product liability bill back in 1987, 1986, maybe. So that has not been my role in the U.S. Senate.

How would I describe a deal breaker? Clearly, if Senator DOLE suggests that a misunderstanding of one word in an agreed-upon understanding put in the CONGRESSIONAL RECORD to set forth legislative history could be a deal breaker, clearly an amendment to the bill would be a deal breaker, provided that the amendment to the bill is controversial in nature and one that would raise an issue which is a very important issue, but is a very controversial issue.

There is no doubt that this is a controversial issue. There is no doubt that major constituencies would be opposed to it. I might be in favor of it. Major constituencies would be opposed.

There is no doubt that the phone lines of Members of the Senate would light up; those of Members of the House of Representatives would light up. That is my definition of a deal breaker. A deal breaker is an amendment to the bill which materially changes the bill or which creates such controversy that it is likely that the bill, instead of being passed in the House, will go to conference.

If it does go to conference with the House, it is likely to come out a far different bill from what we are going to pass in the Senate, to the detriment of the position that has been taken by the President, to the detriment of the position that has been taken by many Republican Senators.

So, I really have no doubt that this fits whatever definition we might come up with for what is a deal breaker.

Now, with respect to the question of legislative history, I tried to address this, probably not very skillfully, this morning. It is not unusual in the Senate for various people to try to create legislative history and affect the interpretation that a court might have of a statute. It is not unusual. Every time we have a tax bill, we try to do that.

I can remember one night literally following one of my colleagues around the floor of the Senate for fear that he would slip something into the CONGRESSIONAL RECORD, and I would have to slip something else into the CONGRESSIONAL RECORD. It is not unusual.

I do not know of any way to muzzle Members of the Senate. Nobody can stop people from saying things on the floor and putting things into the CONGRESSIONAL RECORD. That is the way we operate. If Senator KENNEDY wants to come up with his view of the bill, fine; Senator HATCH, fine.

Senator HATCH made a lengthy speech this morning stating his analysis of the bill. I might agree with parts, disagree with parts of what he said; that is the Senate. I do not see that it is very edifying to a judge if a Senator stands up and makes a speech. I do not think that it is very edifying to a judge if Senator KENNEDY gives his interpretation, and then Senator HATCH gives an opposite interpretation. That is hardly clear legislative history.

What was agreed to was that, with respect to the definition of business necessity, one paragraph governed that, and that that would overtake anything else that was said on the floor.

That was the agreement that was made. Similarly, with respect to the words "job related," we agreed to that; that that would overtake anything said on the floor. Fine.

The difference comes with the word "cumulation" and what it covers, and there is a difference of opinion and a misunderstanding between the administration, on one hand, and myself, on the other hand, as to what is covered by "cumulation." It is not the first time there has been a difference of opinion. One person hears one thing; another person hears another thing. That is not a breach of faith.

One thing that has characterized the last year and a half on this bill is that every time you disagree with somebody, you are accused of bad faith, reneging. That is not a breach of faith. It is a simple misunderstanding of the meaning of a word not very often used: "Cumulation." We understood it to cover one set of situations only, the so-called Dothard case. The administration thought that it was more broadly used. Fine. But at least, with respect to the Dothard situation—namely, what happens when there are two closely related causes of a disparate impact and they cannot be separated out, how do you deal with that—that is what we had in the agreed-on memorandum of understanding of last Friday. So we do have agreement with respect to business necessity, job relatedness, and the Dothard situation.

With respect to anything else, and even those issues, there is no way to stop people from talking. All we can say is that with respect to those three issues, there has been a meeting of the minds as to what the legislation is supposed to mean. I do not think it serves any purpose to keep rehashing legislative history. Justice Scalia was correct, in my opinion. Any judge who tries to make legislative history out of the free-for-all that takes place on the floor of the Senate is on very dangerous grounds. And we cannot speak for the House of Representatives. We cannot create legislative history for the House. It is a muddle. It is going to remain a muddle. Maybe one of the reasons it has made it possible to pass a bill is that there are differences of opinion, that there are differences of interpretation, that we have not nailed down every particular word and phrase in the legislation.

So that is my answer to the Republican leader. My objection to this amendment is not that it is against the trial lawyers; my objection is that it wrecks the bill, or at least threatens the bill.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will include in the Record the particular provision on which, as I stated last Friday, my understanding is virtually identical to the understanding of the Senator from Missouri [Mr. DANFORTH]. We have a common understanding in terms of the legislative history on this issue. I agree with his later comments regarding how people might look at different situations, but certainly the interpretation which was included by Senator DANFORTH on the purpose of the bill is virtually identical to the interpretation which I placed in the RECORD. The bill's purpose has been, as Senator DANFORTH has pointed out, interpreted one way by the Senator from Washington [Mr. GORTON] and another way by the Senator from Utah [Mr. HATCH]. I will make it very clear that my understanding and Senator DANFORTH's understanding are virtually identical.

On Friday, I described the bill's purpose as follows:

> One of the Civil Rights Act's fundamental purposes was to overrule Wards Cove and restore the law to its status under Griggs versus Duke Power. The agreement accomplishes that goal.

Senator DANFORTH described it in virtually identical terms:

> Mr. President, for nearly 2 years many of us have been attempting to put together a civil rights bill that would redress problems created by the Supreme Court of 1989, particularly a bill that would reinstate the Griggs decision and that would overrule the Wards Cove decision.
>
> This amendment would do that.

There was one issue on which there was an explicit agreement on legislative history, and I included that language verbatim in my statement:

> Finally, a plaintiff may challenge a decisionmaking process as a single employment practice when such a process includes particular, functionally integrated practices which are components of the same criterion, standard, method of administration, or test, such as the height and weight requirements designed to measure strength in Dothard versus Rawlinson.

The balance of my statement addressed issues beyond the scope of our agreement.

Mr. President, as I understand, we are prepared to vote. My understanding is from the leadership that they would like a short quorum call so that they can notify Members who are involved in various conferences.

So I indicate to the membership that there is a vote imminent and, at the request of the leadership, we will have a short quorum call.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, one brief observation back on the amendment, the amendment of the Senator from Kentucky, on which we will be voting at some point. It was indicated in the conversation the average case under 1981 rendered damages of about $38,000. I thought it would be appropriate, just to end the debate on my amendment, to point out what the adoption of my amendment would do for the victim in the average case brought under section 1981. The victim would get about $5,000 more for his own pocket if the McConnell amendment were adopted.

Let me just say in conclusion, I certainly understand the desire of the Senator from Missouri to see this bill adopted without any major adjustments. It is astonishing to me that my amendment is even controversial. I am surprised that it is controversial. It does not go to the heart of the bill. It has nothing to do with the compromise and, even if a conference were necessary with the House, we are going to be around for another month. This is not a piece of legislation that is passing at the 11th hour of this Congress. So I hope, Mr. President, for the victims of discrimination, the amendment will be approved.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KOHL). Without objection, it is so ordered.

Mr. DIXON. Mr. President, I ask unanimous consent that I may proceed as though in morning business for about 5 minutes on a subject matter other than the bill before us.

Mr. CHAFEE. Mr. President, I wonder if the Senator would withhold for a minute and a half while I just make one comment on the pending amendment.

Mr. DIXON. I would be delighted to do that.

Mr. CHAFEE. I thank the distinguished Senator from Illinois very much for letting me proceed briefly.

The amendment is that of the distinguished Senator from Kentucky, which would limit attorney's fees in connection with this legislation, the pending legislation we are dealing with. I might say, I am very, very sympathetic with the efforts of the Senator from Kentucky. I think these attorney's fees are excessive in many of these cases, and indeed quite possibly in connection with this very case.

However, we are in a situation where we have labored long and hard to achieve this compromise, and the feeling is that to accept the McConnell amendment at this time would be upsetting to the progress of this legislation. I do not want to call it a deal maker. That seems too harsh a term. Nonetheless, the compromise is an agreement with many parties: the administration, the Democratic and Republican sides, and the leaders.

Since this amendment is not acceptable to both sides, despite my belief in litigation reform, despite my belief that the Senator from Kentucky is correct in this instance, in this particular instance, and in his overall approach for the limitation of attorneys' fees—and I hope he will bring it up again, and I hope we will have some litigation reform before this body before too long—I regretfully will have to vote against the Senator from Kentucky. But I hope he continues his efforts.

Again, I thank the distinguished Senator from Illinois very much for letting me proceed.

Mr. DIXON. Mr. President, I thank my friend, the distinguished Senator

from Rhode Island, and I appreciate his comments and his support for this important bill pending before the Senate.

Mr. President, I renew my request.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACTION ON THE HIGHWAY BILL IS NEEDED NOW

Mr. DIXON. Mr. President, last week, I had seven contractors in my office from around the country. They all said their business was now worse than it was even a month ago when I spoke to the Associated General Contractors in St. Louis—and their business was terrible then. Unfortunately, this is not an isolated example, and it is not limited to the construction and real estate development sectors of our economy. Business is bad, and it is getting worse. Working Americans are anxious about their future; they are justifiably worried about the security of their jobs—and their future. Unemployed Americans are even more anxious. They don't know how they are going to make ends meet, and they don't know how or when they are going to find new jobs, particularly jobs that pay enough to meet their families' needs.

Americans are justifiably concerned about their future, and their children's futures. They need their Government to act; they expect their Government to act; they are entitled to have their Government confront these problems.

Government may be part of the problem, but Government can also lead the way to solutions. That is why we elect a President; that is why I am in public service. Government must meet this challenge; we must act.

One step we ought to be taking is to enact the surface transportation bill. Our infrastructure badly needs improving, and our economy desperately needs the stimulus this bill will provide.

We are now well past the 100 day deadline the President challenged Congress to meet. Even worse, we are now 29 days into the new fiscal year, 29 days into the first year of this bill. Yet the bill is not yet law; in fact, it has not even gone to conference.

The reason the bill is not yet before the President is all too simple. The bill is not moving because of holds placed on it by Senators from the minority side of the aisle. All Senators are entitled to exercise their rights under the rules. However, the administration cannot have it both ways, Mr. President. It cannot criticize the Democratically controlled Congress for failing to act when it is Republican Members who are preventing action.

We need this bill. In my own State of Illinois, enactment of this measure will bring over $525 million in highway construction and rehabilitation funds this year for badly needed projects. It will provide jobs for thousands of construction workers, and additionally thousands of supplier and multiplier-effect jobs.

On the other hand, delay threatens further damage to what is already a very bad economy in my State. It could also halt major transportation projects now underway, such as the $450 million Kennedy Expressway rehabilitation project in the Chicago area, the $123 million Clerk Street bridge near my own hometown, and the $61 million Franklin Street bridge in Chicago.

Illinois needs these transportation funds to maintain its transportation infrastructure and to make long-needed improvements. Illinois needs this bill now to help it fight the recession.

Mr. President, the clock is ticking. Our people are asking for our help, our roads are crumbling and our bridges collapsing. And yet, this bill is still not law, because some Senators are still practicing the politics of delay.

In the view of this Senator, further delay is unconscionable, and the Senate should not tolerate it. This bill provides an opportunity to take a tangible step to help get our economy moving again. This bill is a priority for the country, and it should be the Senate's priority. If we cannot get this bill moving, I think we should take up the motion to appoint conferees and force those who are delaying action to explain to the American people why they are blocking action on a bill that has already passed both the House and the Senate. They should have to explain to the American people why they are blocking action on a bill that is so essential. They should have to explain to the American people why they do not want to help fight the recession by moving this bill forward. They should have to explain to the American people why they are preventing the Senate from getting this critical measure, and getting the country, moving again.

Mr. President, I yield the floor.

I see my friend from Utah. I yield the floor.

CIVIL RIGHTS ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. HATCH. Mr. President, I thank the distinguished Senator from Illinois for his kindness in yielding the floor.

Mr. President, this amendment by Senator MCCONNELL is one that I happen to like. I think it makes sense. It might make better sense if it was graduated from a contingency fee standpoint. But I like the amendment and, frankly, I wish we could add it to this bill.

But we have come to a point and place in this battle after 2 years, really a year and a half, a lot longer for some, the Senator from Massachusetts and myself and most others, to the point where we had a deal. We have a bill that I think does right by the country, that I think has done the impossible job of bringing together the White House, the Justice Department, the Democrats in the Senate, and the Republicans in the Senate, at least I think a significant majority. We have a bill that we have worked on for days, weeks, months, and now years. We have had so many disagreements and so many behind-the-scenes battles that it has just about driven us all wild. It is a bill that makes sense. It is a bill that we can all be proud of, and it is a bill that I think will become a true civil rights bill in the sense that it should be a civil rights bill. It is a bill that resolves some of the most difficult, complex, controversial difficulties and disagreements that I have ever seen in any of these civil rights bills.

So I have reached a point where I think what we have to do is pass this bill. We do not want it to go to conference where we get into another big hullabaloo over all of the words of this bill again. Some people thought that words are not important, but they are extremely important, and we have worked out the words, and it has not been easy. It has cut across the whole philosophy known by the Senate in the history of the Senate. It has been one of the monumental achievements, and a lot of people deserve credit for it.

So I hate to tell my friend from Kentucky that I have to oppose his amendment, but I am basically going to oppose every amendment to this bill because I do not want to see it ruined at this time after what we have gone through and what we have accomplished. And any amendment, even one that really, as he has said, does not go to the substance of the bill, any amendment could cause us difficulties, could force us to conference, force us into another big brouhaha over what really happens to be an important final decision here. We in the Senate sooner or later, when we have a bill where we have had, it seems to me, this type of an effort put forth, we have to someday just fish or cut bait. At this particular point I think it is time for us to pass this bill.

I know there will be other amendments. But I want to serve notice right now—some of these other amendments I love, I would like to vote for, but I am going to be against basically. The only amendments, I think we are going to try to accept from here on in are those that the distinguished Senator from Massachusetts, the distinguished minority leader, the distinguished Senator from Missouri, and myself agree to. And that is going to be very few, it seems to me, under these circumstances and probably only means technical amendments. There is one other amendment we are going to agree to immediately following the vote on this.

But I ask all of our colleagues on both sides of the floor, as much as I

like this amendment, I ask all colleagues to vote against it. And if there is a motion to table, I hope that we will table this amendment and get about passing this civil rights bill in the interest of America, in the interest of all of us, and in the interest of getting through this legislative year.

Otherwise, I can just tell you right now, I know of at least 15 other amendments, some of which are highly controversial. I think it is just the beginning of the amendment process. I think we could have 30 or 40 amendments before the end of this week, many of which would be controversial, some of which I would love to support with everything I have got, and others would, too.

I think it is time to get this battle over with and, therefore, I hope that we will all vote against the amendment of the distinguished Senator from Kentucky. I admire what he is doing. I admire him personally, and I wish I could vote for his amendment. But I think it is time to get to this bill, the basic issue that we have, and that is passing a monumental civil rights bill that we now have the administration backing, we now have the Justice Department backing, something that I had real questions could be brought about, and we now have significant numbers on both sides of the floor backing as well. So I hope that I can appeal to my colleagues to help us on this matter and to help us in future amendments as well, because the bill now is something that is an amazing piece of legislation that I think many of us thought we would never arrive at.

I yield the floor.

Mr. HATFIELD. Mr. President, the Senate is about to vote on the amendment offered by my friend from Kentucky, Senator MCCONNELL. This amendment would place important limits on the fees available to attorneys who represent plaintiffs in certain civil rights cases. The amendment would also require an attorney to disclose to a client a binding hourly rate prior to representation.

Mr. President, I oppose this amendment on this vehicle. I want to make it clear, however, that my opposition does not indicate a lack of support for the principle of limits on attorney fees. In my opinion, when a person is injured by the actions of another, the injured person should receive the largest possible portion of the damages awarded by a court of law. While I recognize that attorneys are necessary and often provide plaintiffs with their only shot at winning a judgment for an injury, I am continually shocked by the reports that I have seen of hourly wage rates charged by many attorneys.

The merits of this amendment, however, do not justify endangering the historic civil rights compromise bill that we have before us. I urge the Senator from Kentucky to return with his amendment at a later date when it can be considered separately.

Mr. DANFORTH. Mr. President, I move to table the McConnell amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Missouri [Mr. DANFORTH] to table the amendment of the Senator from Kentucky [Mr. MCCONNELL]. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The PRESIDING OFFICER (Ms. MIKULSKI). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 68, nays 30, as follows:

[Rollcall Vote No. 233 Leg.]

YEAS—68

Adams	Ford	Mitchell
Akaka	Fowler	Moynihan
Baucus	Glenn	Nunn
Bentsen	Gore	Packwood
Biden	Graham	Pryor
Bingaman	Harkin	Reid
Boren	Hatch	Riegle
Bradley	Hatfield	Robb
Breaux	Heflin	Rockefeller
Bryan	Hollings	Roth
Bumpers	Inouye	Rudman
Burdick	Jeffords	Sanford
Chafee	Johnston	Sarbanes
Cochran	Kennedy	Sasser
Cohen	Kerry	Shelby
Cranston	Kohl	Simon
Danforth	Lautenberg	Simpson
Daschle	Leahy	Specter
DeConcini	Levin	Stevens
Dixon	Lieberman	Warner
Dodd	Mack	Wellstone
Dole	Metzenbaum	Wirth
Durenberger	Mikulski	

NAYS—30

Bond	Garn	McConnell
Brown	Gorton	Murkowski
Burns	Gramm	Nickles
Byrd	Grassley	Pell
Coats	Helms	Pressler
Conrad	Kassebaum	Seymour
Craig	Kasten	Smith
D'Amato	Lott	Symms
Domenici	Lugar	Thurmond
Exon	McCain	Wallop

NOT VOTING—2

Kerrey Wofford

So the motion to lay on the table the amendment (No. 1282) was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the motion was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate is not in order. The Chair thanks the Senators for cooperating. The Senator from Virginia is recognized.

Mr. WARNER. Madam President, I just wish to get the attention of the managers and other Senators. For some time now I have been working on the amendment which would have the effect of including Federal employees in the damage section. I have not as yet had a chance to show the amendment to the managers. I have been approached by several Senators, including the Presiding Officer and the Senator from Alaska, who knew of my intention, and they desire to be cosponsors.

I have also been approached by the distinguished Senator from Colorado, but I am not sure what his desire may or may not be. At this time I would simply indicate my intention and send the amendment to the desk, and I will not seek further action at this time.

Several Senators addressed the chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, it was always the understanding of the Senator from Missouri [Mr. DANFORTH] and myself that Federal employees are covered by the damages provision. I think it does help to ensure that coverage by adding explicit language referring to section 717 and the Rehabilitation Act.

The Senator from Colorado, Mr. WIRTH and the Senator from Maryland [Ms. MIKULSKI] had talked to me when we initially made the presentation last Friday on this very issue, and we have been working with them as well as with the Senator from Virginia because we know the importance of clarification. I strongly support that concept. I know the Senator from Missouri does as well. I am very hopeful we will be able to make the kind of adjustment needed to make the coverage of Federal employees even clearer, and will be glad to keep the Members informed as to the progress we are making.

Mr. WIRTH. Will the Senator yield?

Mr. KENNEDY. I will be glad to yield.

Mr. WIRTH. Is the amendment that is going to be offered by the Senator from Virginia the same as the amendment which I have been talking about with Senator DANFORTH? Do we know if that is the case?

Mr. KENNEDY. I have not seen the amendment. As I understand it, the amendment would make the clarification by adding section 717 of the Civil Rights Act as well as comparable ADA provision. Senator DANFORTH had selected the ADA language, so there was every reason to believe that such a change would be unnecessary. But I can understand the importance of the clarification and I will, as soon as I have a chance to look at the amendment, be glad to make any comment at an appropriate time.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, first I ask unanimous consent that the Senator from Maryland be made a cosponsor again with the Senator from

Alaska [Mr. STEVENS]. I will leave it at the desk so Senators can examine it and then at the appropriate time, when the managers think it proper, I will advance the amendment, and perhaps I can work with the Senator from Colorado.

The PRESIDING OFFICER. Without objection, the Senator from Maryland, the Presiding Officer, will be added as a cosponsor. Which Senator from Alaska?

Mr. WARNER. Mr. STEVENS.

The PRESIDING OFFICER. Mr. STEVENS will be added as a cosponsor. And the amendment will remain at the desk subject to the offeror of the amendment calling it up.

Mr. WARNER. Madam President, it was only moments ago for the first time I knew the Senator from Colorado had interest in a similar amendment, and I am sure we can accommodate both Senators in this matter.

I yield the floor.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 1283 TO AMENDMENT NO. 1274

Mr. BROWN. Madam President, I send to the desk an amendment on the bill and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the Brown amendment.

The bill clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 1283 to amendment No. 1274.

Mr. BROWN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the amendment, add the following new section:

SEC. . EQUAL APPLICATION OF THE LAW TO CONGRESS.

The Congress finds—

That Congress should be required to adhere to laws affecting the public at large in the same manner and form;

That Congress has exempted itself from more than a dozen laws:

That the credibility and reputation of Congress would be bolstered by the enactment of legislation requiring coverage under these laws; and

That Federalist Paper, Number 57, asserts that elected officials "can make no law which will not have in full operation on themselves and their friends, as well as on the great mass of society. * * * If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature as well as on the people, the people will be prepared to tolerate any thing but liberty."

Therefore, it is the sense of the Senate that the Senate recognizes the need to create an equitable balance between laws governing the public at large and its own affairs, and that the Senate will act with speed in rectifying this shortcoming in this application of laws governing civil rights, labor, ethics, safety, privacy, and governmental access policies.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 1284 TO AMENDMENT NO. 1283

(Purpose: To repeal exemptions from civil rights and labor, and other laws for Congress and certain employees of the executive)

Mr. NICKLES. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator form Oklahoma [Mr. NICKLES], for himself, Mr. PACKWOOD, Mr. BROWN, and Mr. MCCAIN, proposes an amendment numbered 1284.

Mr. NICKLES. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the pending amendment, add the following:

Notwithstanding section 19 of this Act, the following section shall apply in lieu of section 19:

SEC. . COVERAGE OF CONGRESS AND PRESIDENTIAL APPOINTEES.

(a) CONGRESSIONAL EMPLOYMENT.—

(1) APPLICATION.—

(A) IN GENERAL.—In addition to the laws that apply with respect to employment by the Senate under section 509(a)(2) of the Americans with Disabilities Act of 1990, the rights and protections provided pursuant to this Act and the provisions specified in subparagraph (B) shall apply with respect to employment by Congress.

(B) PROVISIONS.—The provisions that shall apply with respect to employment by Congress shall be—

(i) section 1977 of the Revised Statutes (42 U.S.C. 1981);

(ii) section 1977A of the Revised Statutes (as added by section 5 of this Act);

(iii) the National Labor Relations Act (29 U.S.C. 151 et seq.);

(iv) the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.);

(v) the Equal Pay Act of 1963 (29 U.S.C. 206); and

(vi) the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the limitations contained in this paragraph, a congressional employee or any person, including a class or organization on behalf of a congressional employee, may bring an administrative action before an administrative agency to enforce a provision of law referred to in paragraph (1) against Congress or the congressional employer of the employee, if a similarly situated complaining party may bring such an action before the agency.

(B) LIMITATIONS ON COMMENCEMENT OF ADMINISTRATIVE ACTION.—An administrative action commenced under this paragraph to enforce a provision of law referred to in paragraph (1) shall be commenced in accordance with the limitations, exhaustion, and other procedural requirements of the law otherwise applicable to a similarly situated complaining party seeking to enforce the provision.

(C) ACTION.—In any administrative action brought before an agency under this paragraph to enforce a provision of law referred to in paragraph (1), the agency may take such action against Congress or the congressional employer as the agency could take in an action brought by a similarly situated complaining party.

(3) ENFORCEMENT BY CIVIL ACTION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the limitations contained in this paragraph, a congressional employee or any person, including a class or organization on behalf of a congressional employee, may bring a civil action to enforce a provision of law referred to in paragraph (1) in a court specified in subparagraph (C) against Congress or the congressional employer of the employee, if a similarly situated complaining party may bring such an action.

(B) LIMITATIONS ON COMMENCEMENT OF CIVIL ACTION.—A civil action commenced under this paragraph to enforce a provision of law referred to in paragraph (1) shall be commenced in accordance with the limitations, exhaustion, and other procedural requirements of the law otherwise applicable to a similarly situated complaining party seeking to enforce the provision.

(C) VENUE.—An action may be brought under this paragraph to enforce a provision of law referred to in paragraph (1) in any court of competent jurisdiction in which a similarly situated complaining party may otherwise bring an action to enforce the provision.

(D) RELIEF.—In any civil action brought under this paragraph to enforce a provision of law referred to in paragraph (1), the court—

(i) may grant as relief against Congress or the congressional employer any equitable relief otherwise available to a similarly complaining party bringing an action to enforce the provision;

(ii) may grant as relief against Congress any damages that would otherwise be available to such a complaining party; and

(iii) shall allow such fees and costs as would be allowed in such an action.

(b) CONDUCT REGARDING MATTERS OTHER THAN EMPLOYMENT.—

(1) APPLICATION.—In accordance with section 509(a)(6) of the Americans with Disabilities Act of 1990, the rights and protections provided pursuant to such Act shall apply with respect to the conduct of Congress regarding matters other than employment.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, any person may bring an administrative action described in subsection (a)(2) in accordance with such subsection, or a civil action described in subsection (a)(3) in accordance with such subsection, against Congress or a congressional employer, to enforce paragraph (1).

(c) INFORMATION.—

(1) APPLICATION.—The rights and protections provided pursuant to section 552a of title 5, United States Code (commonly known as the the Privacy Act), shall apply with respect to information in the possession of the Congress.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, any person may bring an administrative action described in subsection (a)(2) in accordance with such subsection, or a civil action described in subsection (a)(3) in accordance with such subsection, against Congress, or the congressional employer in possession of the information, to enforce paragraph (1).

(d) ETHICS IN GOVERNMENT.—

(1) APPLICATION.—The rights and protections provided pursuant to chapter 40 of title 28, United States Code (commonly known as title VI of the Ethics in Government Act of 1978) shall apply with respect to investigation of congressional improprieties.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, any person may bring a civil action described in subsection (a)(3) in accordance with such subsection against any party with a duty under chapter 40 of title 28, to enforce paragraph (1).

(e) PRESIDENTIAL APPOINTEES.—

(1) APPLICATION.—In addition to the laws that apply with respect to employment by the Senate under section 509(a)(2) of the Americans with Disabilities Act of 1990, the rights and protections provided pursuant to this Act and sections 1977 and 1977A of the Revised Statutes shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, a Presidential appointee or any person, including a class or organization on behalf of a Presidential appointee, may bring an administrative action described in subsection (a)(2) in accordance with such subsection, or a civil action described in subsection (a)(3) in accordance with such subsection, against the United States to enforce paragraph (1), if a similarly situated complaining party may bring such an administrative or civil action before the agency.

(f) DEFINITIONS.—Notwithstanding any other provision of this Act, as used in this section:

(1) CONGRESSIONAL EMPLOYER.—The term "congressional employer" means—

(A) a supervisor, as described in paragraph 12 of rule XXXVII of the Standing Rules of the Senate;

(B)(i) a Member of the House of Representatives, with respect to the administrative, clerical, or other assistants of the Member;

(ii)(I) a Member who is the chairman of a committee, with respect, except as provided in subclause (II), to the professional, clerical, or other assistants to the committee; and

(II) the ranking minority Member on a committee, with respect to the minority staff members of the committee;

(iii)(I) a Member who is a chairman of a subcommittee which has its own staff and financial authorization, with respect, except as provided in subclause (II), to the professional, clerical, or other assistants to the subcommittee; and

(II) the ranking minority Member on the subcommittee, with respect to the minority staff members of the committee;

(iv) the Majority and Minority Leaders and the Majority and Minority Whips, with respect to the research, clerical, or other assistants assigned to their respective offices; and

(v) the other officers of the House of Representatives, with respect to the employees of the officers; and

(C)(i) the Architect of the Capitol, with respect to the employees of the Architect of the Capitol;

(ii) the Director of the Congressional Budget Office, with respect to the employees of the Office;

(iii) the Comptroller General, with respect to the employees of the General Accounting Office;

(iv) the Public Printer, with respect to the employees of the Government Printing Office;

(v) the Librarian of Congress, with respect to the employees of the Library of Congress;

(vi) the Director of the Office of Technology Assessment, with respect to the employees of the Office; and

(vii) the Director of the United States Botanic Garden, with respect to the employees of the United States Botanic Garden.

(2) CONGRESSIONAL EMPLOYEE.—The term "congressional employee" means an employee who is employed by, or an applicant for employment with, a congressional employer.

(3) PRESIDENTIAL APPOINTEE.—The term "Presidential appointee" means an employee, or an applicant seeking to become an employee—

(A) whose appointment is made by and with the advice and consent of the Senate; or

(B) whose position has been determined to be of a confidential, policy-determining, policymaking, or policy-advocating character by—

(i) the President for a position that the President has excepted from the competitive service;

(ii) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(iii) the President or head of an agency for a position excepted from the competitive service by statute.

(4) SIMILARLY SITUATED COMPLAINING PARTY.—The term "similarly situated complaining party" means—

(A) in the case of a party seeking to enforce a provision with a separate enforcement mechanism for governmental complaining parties, a governmental complaining party; or

(B) in the case of a party seeking to enforce a provision with no such separate mechanism, a complaining party.

(g) EFFECTIVE DATE.—This section shall take effect 120 days after the date of the enactment of this Act.

Mr. NICKLES. Madam President, the amendment I have sent to the desk on behalf of myself, Senator PACKWOOD, Senator BROWN, and Senator MCCAIN is entitled the Congressional Accountability Act of 1991. It is an amendment to the underlying civil rights package.

Madam President, traditionally for the last many years—not just many years, but several decades—Congress has exempted itself from a number of civil rights, health, safety, and many labor laws which have been applied to the Federal executive and judicial branches and in all cases to the private sector. This idea that Congress should exempt itself, in my opinion, is a serious mistake and needs to be remedied.

My amendment would make Congress and all its instrumentalities subject to all the regulations and remedies contained in the following laws: The National Labor Relations Act of 1935, the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1967, and the amendments of that Act in 1975, the Occupational Safety and Health Act of 1970, the Equal Employment Opportunity Act of 1972, Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990; also the Privacy Act of 1974 and title VI of the Ethics in Government Act of 1978.

In addition, my amendment shall cover certain employees of the executive branch under the laws listed above where applicable.

Madam President, the real issue is about Congress leading by example and not by exemption. If we are going to impose these standards, these remedies, and these procedures on Federal agencies, State and local governments, and on the private sector, I believe we must impose them on ourselves. If a business runs afoul of many of these laws listed in my amendment, it would face Federal court litigation and endless bureaucratic headaches. Congress has exempted itself from the abovementioned laws completely or has limited redress to be determined by internal mechanisms. Would we allow a major corporation to set up its own rules for dealing with complaints under these laws? The answer is no, and I do not think it is fair for us to do so either.

Congress must no longer tell the American public that we are above the laws which we pass in this Chamber every day. Therefore, I encourage my colleagues to adopt this amendment.

Madam President, let me just state offhand it is not my intention to harass the Congress. It is not my intention to belittle Congress. It is not my intention to violate anything in the Constitution. It is my intention to have Members of Congress live under the same rules, the same procedures, the same remedies as the private sector.

I think that could be a very educational process. In some cases we may find the laws we pass are too onerous and maybe need to be amended. Maybe we will find they do not go far enough and need to be strengthened. But I think Congress living under the laws would be a giant step in the right direction, and I hope this amendment will be adopted.

Mr. PACKWOOD. Madam President, I rise to support the amendment that Senator NICKLES and myself and others are cosponsoring. I want to divide my comments, if I might, into two. One argument that is going to be used against this is that it is unconstitutional for a variety of reasons: Separation of powers, speech clause in terms of what we say on the floor of the Congress. I do not think that is true. It may be true, but I do not think that is an issue we need to cross.

If we pass this bill and this goes to the courts and it goes to the U.S. Supreme Court and the U.S. Supreme Court says this is unconstitutional, there is nothing we can do about that short of amending the Constitution. There is nothing we can do about that. But I think what we are suggesting is constitutional, or certainly arguably constitutional.

I think the Court might say Congress has the power to allow itself to be treated, not necessarily as we treat the private sector, to allow ourselves to be treated as we choose to be treated. The

issue would be would these laws be constitutional if they only applied to Congress. So that is the legal argument.

Now let us put that aside. There is nothing we can do to solve that tonight as to whether or not the Supreme Court is going to find this constitutional or not, but it is not so clearly unconstitutional that we should dismiss it.

Now come to the substance, as to whether or not we should be subject to these laws. Take a look at the ones we are talking about, some of them. National Labor Relations Act—should our employees be allowed, if they want, to organize and join a union? Why not? It is allowed at every level, in almost every State I know of, local government, county governments, National Federation of State, County, and Municipal Employees Organizations; most of the governments of this country.

It is amazing the governments continue to function. Some people argue they do not. But I do not think it is because they happened to have been unionized. It applies to other levels of government. Is it going to hurt the operation of the Congress if our employees would be allowed to vote on whether or not they wanted to join a union? I think it would not hamper our effectiveness at all.

The Fair Labor Standards Act—here, I do not think anyone is arguing about minimum wage. If there is an employee that works in the U.S. Congress that is making less than the minimum wage, I would be surprised. The issue is overtime.

I practiced labor law for a number of years before I came to the Senate. I can assure the Congress—I will take a guess—80 to 90 percent of the people that work for us would fall outside the definition of the type of employee that is subject to the overtime provision. They are policymakers, high-salary employees, administrative employees. I cannot think of a single employee that sits here on the Senate floor with us tonight that would fall within the provisions of the overtime. If those poor devils work 14 hours a day, they will still work 14 hours a day, and they will not get time and a half for it.

Equal pay—why on Earth are we even arguing the situation of whether or not we should have equal pay. Pay men and women the same for the same job? That falls under the Fair Labor Standards Act. If we passed nothing else, nobody would object to that, from the standpoint of decent morality.

Discriminating on the basis of race, sex, religion, national origin: Anything wrong with saying you cannot do that? It is very important to recognize we can discriminate on the basis of our State. If we want to hire people from our State, that is all right. That is not prohibited. If we want to hire people from our political party, that is not prohibited. So if you are worried that you are going to get a disloyal office, or people not from your State, there is nothing in there that prohibits that.

Age discrimination—I would like to think most of us by now have discovered there are many people, including some who have retired, who are willing to come to work, and they make excellent employees.

So go right through the list of the things that the Senator from Oklahoma has talked about, and say to yourself: Would my office be hampered if these laws applied? I would answered that if you say yes, my office would be hampered, then there is something wrong with the way you are running your office now.

So put aside the argument as to whether or not this is constitutional. Put aside the argument as to whether or not we should treat ourselves like we treat private industry. These laws should be adopted, and we should subject ourselves to these laws whether or not they are applied to private industry, because it is a simple matter of fairness and decency.

I hope very much that the Senate will adopt this amendment tonight. I thank the Chair.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I have reviewed the amendment. I have to say, I understand what the distinguished Senator from Oklahoma is trying to do. I admire him for trying to do it. As a matter of fact, on any other bill, I probably would not have a heck of a lot of difficulty supporting him, except that I do think there is a constitutional issue here on whether or not the congressional employee may bring an administrative action before an administrative agency to enforce a provision of law, referred to in paragraph 1—against the Congress by the congressional employee. A similar situation is when a complaining party may bring such an action before the agency.

That alone probably would make this unconstitutional, but I am not sure. It is something which is a complex issue that I think needs to be raised.

Madam President, I have to say that this amendment is an extremely complex, extremely difficult amendment, because it would apply the revised statutes, in 42 U.S.C. 1981, section 1977(a) of the revised statutes, as added by section 5 of the act, to the National Labor Relations Act, Fair Labor Standards Act, Equal Pay Act, the Occupational Safety and Health Act, some of which cross over between administrative and legislative separation of powers areas.

This is precisely the type of an amendment that really deserves a lot of debate, a lot of hearings, a lot of time to be put in before you actually go with it.

Having said all of that, my inclination is to tell the distinguished Senator from Oklahoma that it is an interesting amendment, and it is one that I am intrigued with, and that perhaps I could support sometime in the future.

But I have to tell everybody on the floor this: Those who want a civil rights bill, this is a killer amendment. It may be a wonderful amendment, and I have to say it may have many good reasons for adoption sometime into the future.

But if we put in this civil rights bill, it seems to me there is no way that we are going to be able to pass this bill through both Houses of Congress without having many, many other changes that would change the agreement that we have carefully worked out with the White House, with the Justice Department, with both sides of the floor, with individual Senators who have had an extreme interest in this matter, all of which is very delicately put together, and all of which would be upset if this amendment passes in its current form.

I understand what the distinguished Senator from Oklahoma is trying to do. I commend him for it. I admire him for it. Ordinarily, this would be the type of bill you would consider putting it on if it was a bill where there is a free-for-all, and we literally had not worked out the delicate problems that have divided us in the past. But we have worked those out.

We now have a bill that, even though nobody is totally pleased with it, is a bill that basically everybody can accept—that includes people from the far left to the far right of the political spectrum—if we really believe in civil rights, and if we really believe in doing something about some of the disadvantages to certain people in our society today.

So, Madam President, I have to say that I will certainly support the motion to table on this amendment reluctantly, because I do not want to, deep down, shoot down my distinguished friend from Oklahoma. But I hope that our colleagues will understand that there is a higher goal here, and that is passing a civil rights bill that has been the most difficult one to put together in a long time, that is now put together with wide support that, miraculously given, now we do not want to turn our backs on.

So, Madam President, I hope that our colleagues will realize this, and realize that, if we add this to the civil rights bill, I think the civil rights bill, for this session of Congress, is dead, as well-intentioned as this may be. I would consider supporting this on some other piece of legislation, but not this one. I hesitate to stand up and do this to a great colleague like our colleague from Oklahoma.

But on the other hand, I think that what I have said is true, and we have too much at stake in this bill at this particular time to pass this amendment without the full realization that

if we do, the civil rights bill, for this year, would be dead.

I yield the floor.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BROWN. Madam President, I rise in support of the amendment of the distinguished Senator from Oklahoma. While it amends the basic amendment that I had offered to the bill, I think it is a very positive one. The amendment I had offered was simply a sense of the Senate, a suggestion that the U.S. Senate ought to move ahead in this area of legislation, to apply the same laws to itself that we apply to the rest of the country. But the Senator from Oklahoma provides the real meat. He offers an amendment that does exactly what I suggested we ought to do. He offers an amendment that says we are going to live by the same rules we ask the rest of the Nation to live by.

Some in this Chamber have suggested a serious concern, and that is that if this amendment indeed passed, it could jeopardize a good civil rights bill. Madam President, I think this is a good civil rights bill. It is a compromise and, like all compromises, it does not include everything every side wanted. But it is a good compromise.

I guess the question that is raised is whether or not this amendment would indeed jeopardize a good compromise. Each of us has a chance to return home often and get input from those that we represent. My favorite forum for doing that is the town meetings. Sometimes we have a large number come and sometimes small. But in those meetings, the discussions are frank and open. I have always felt that I have received a good deal from the people of Colorado from those meetings. Perhaps the people in Colorado are different from those in Maine, Massachusetts, or Oklahoma, but I do not think so.

One of the things that comes up often is a question as to why the Members of Congress set rules for themselves that are different from everybody else. It does not relate just to civil rights and sexual harassment. They mention those, but they talk about everything. They talk about the EPA, about OSHA, and they talk about the Fair Labor Standards Act. But, basically, what they talk about is people in Washington, DC, who set themselves up as a ruling class and say that the same rules are not going to apply to them that apply to everybody else. Everyone, Democrat or Republican, liberal or conservative, thinks that is unfair. There are not many things people in the town meeting agree on, and sometimes I think there is almost nothing. On this they all agree. I have never had a town meeting in 11 years, while in the House or the Senate, where virtually every single person who came did not believe we ought to live under the same laws everybody else does.

I suppose other Members can come to the floor and say their States are different. But I must tell you that I doubt it. I believe the men and women of this country believe we ought to live under the same laws they live under. Many responsible, respected Members of this body will come forward and say, Hank, if we do that, it will raise real problems for this body and its ability to function.

I do not dismiss those arguments. I have heard those arguments from people I respect, honest and thoughtful people. The argument they make is that we are in special jeopardy, because we are up for reelection periodically, and that irresponsible charges can be brought against our office. Perhaps that is true. But that is not new to the political process. It does not happen just with regard to these things. It happens every day in every way from our offices. We are not new to those problems.

No one has complained that the incumbency retention rate is so low that it jeopardizes the security of the Nation. I have not heard anyone suggest that. These problems are not new. They are ones we can cope with. Is it troublesome? Absolutely. Is it going to be tough? Yes, at times it will be.

I do not think this is a sugar-coated bill. I think it has real bite. What I think will come out of this are three things: First, I think the people of this country will gain great respect for this body. Some, unfortunately, do not have that level of respect right now. It will come from a body being looked on as one that is willing to apply the same rules to itself. We will be thought of as fair when we have been thought of as unfair. I think that change will come with the adoption of this amendment.

Second, I think a better understanding will come to this body of the laws, and the rules, and the regulations we pass. I think we are going to have a better feel for the impact of the laws we impose on this Nation, if they apply to us as well. That does not mean that the Members of this body are not wise, thoughtful, or reasonable. But it does mean they may not have had the same experiences as people who work with their hands and their minds that make this country strong. It may mean they do not have the same background experiences or life experiences to weigh the laws that we pass. This will help us pass better laws.

But, third—and maybe most important—it comes to the very fundamental background, the fundamental thought, the fundamental way we view ourselves. This Nation was not founded by the elite. We are not a people who respect the concentration of power. We are people who thought the power of a Nation ought to be in the hands of those who do the work, the men and women who make a Nation strong, the men and women who turn the plows and the wheels of industry. We are not a Nation that thought the elite were the ones that had all the wisdom. The simple fact is that this amendment says a lot about America and the kind of Government we want and we believe in. This amendment says that there is nobody so good that they cannot live by the same rules that everybody else does.

This amendment says that the beliefs of the Founding Fathers still exist today. Perhaps many Members have heard it before, but let me share with you an excerpt from No. 57 of the Federalist Papers. It asserts that elected officials "can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of society."

It goes on to say, "If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate anything but liberty."

This is not just an amendment about Senate procedures. This amendment goes to the very heart of what this Nation believes in: self-government. This amendment says that the laws are going to apply to everyone, that we are not a ruling class in this Chamber, or in the Chamber across the way, that we are Americans, and that we are Americans all. What is good enough for us is good enough for those who we serve, and what laws apply to them must apply to us. It is a simple, straightforward question. It is a yes or no answer as to whether or not we will live by the laws that we impose on the rest of the Nation.

This Senator believes that this amendment is in tune with the very foundation of liberty and the concepts of freedom that have guided this country so long and so far. I believe this is at the foundation of why this democracy of ours has lasted longer than any republic in the history of mankind. I believe the adoption of it will renew the spirit America has and renew the dedication to self-government that we so strongly believe in.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I just wish to congratulate and compliment my friend and colleague, Senator BROWN, for his statement. He has not been in this body for that many years, but he has already provided to be a very valuable Member, and certainly in the tradition of the Senator that he replaced, Senator Armstrong, who was one of the outstanding Senators for 12 years. I compliment the Senator from Colorado. He has a background which I think is sorely needed in this body, in the form of what he has experienced in the private sector as an employer, as a person who struggles with living under these laws.

I happen to have a business background, as well. I think, again, some people have questioned the motives of this legislation. It is not to deride Congress. But it is clearly to eliminate some inequities. I might mention that I have heard some of my colleagues, along with Senator HATCH, say this is the wrong bill—I note that that is pending by my good friend from Missouri, Senator DANFORTH—do it on another bill.

He would probably vote for it on some of these labor law applications if it was on another bill. I have heard other people tell me that; sure, Congress should comply with OSHA or Equal Pay Act or some of these other laws as we put on the rest of the country, but not on this bill because it might jeopardize the civil rights bill.

Frankly, I think this is the right bill. I think we have been looking for a long time. We probably should have done it many years ago. In some cases we should have done it 50 years ago or 40 years ago, when some of these bills were originally passed. I think this is the right bill.

One final comment. I heard some comments made, it is unconstitutional. I do not think that is clear. As a matter of fact, I think it is unclear at best. I might mention that in reading from the Constitution when we talk about the speech and debate clause, if you look at article I, section 6, just reading from it, it said:

> The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

The speech and debate clause.

I think we are really stretching it when we say the speech and debate clause should preclude us from complying with several administrative functions, administrative laws, civil rights laws, labor laws.

Certainly legislative functions should be exempt. Legislative functions would be immune under the speech and debate clause. But not administrative. Not in the hiring and firing, not in the other laws, and in complying with labor laws such as OSHA and the Equal Pay Act.

I notice the amendment by the majority leader and Senator GRASSLEY touches four or five of the laws we are dealing with under this bill; Civil Rights Act of 1974, Age Discrimination Act of 1967 and 1975, the Rehabilitation Act of 1973, and Americans With Disabilities Act of 1990. That is covered under the so-called Mitchell-Grassley compromise. We expand it to include several labor laws and, I might mention, in addition to that, the Privacy Act of 1974 and Ethics in Government Act of 1978. I think those laws should also apply to Congress. I would hope that my colleagues would agree.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. Madam President, I listened with great interest to the remarks of my friend from Colorado, Senator BROWN, very good remarks, well-intentioned. I listened to the remarks of my friend from Oklahoma, very interesting remarks, well-intentioned. Just one problem with all those remarks. They totally ignore the Constitution of the United States. And so I take strong issue with my friend from Oklahoma.

There is no question that this legislation and the following amendment to be considered unconstitutional on its face. You do not have to take my word for it. Take the word of the U.S. Supreme Court.

I agree we should be covered by any laws that we wish to be covered by, including all of those in this amendment. I agree with the Senator from Colorado on that completely. Unfortunately, or fortunately, we have the strictures of the speech or debate clause of the U.S. Constitution, which has been broadly construed, as well as the doctrine of separation of powers.

It is unthinkable, and would have been to the Founding Fathers, that an executive branch agency such as the Department of Labor or the National Labor Relations Board would have jurisdiction over a Member of Congress. We are not your local manufacturer. We should be subject to the same laws, but hardly the same enforcement mechanism.

The purpose of separation of powers was to ensure that the three branches were separate. I would point out to my friend from Oklahoma that the Federal court system is not included in his amendment. I am sure it is not included because that clearly would be not only unconstitutional, but ludicrous on its face.

If you want to talk about the Founding Fathers, and the Federalist Papers, if we had some time here I would like to read some of them myself. One of the things that they were concerned about from the beginning was that the legislature be free from interference of the judiciary and the executive as it pertained to the legislative duties.

I am not going to talk for a long time because the hour is getting on, and I am sure the leader has other things he wants to do. I will leave you with two cases. There are about 12, but these 2 could not have them any clearer. Let us first take Browning versus the Clerk of the House of Representatives. It was the D.C. Circuit, 1986. That was a case in which a stenographer sued because the stenographer was fired.

Now, frankly, I would not have assumed that a stenographer peformed those policy legislative functions. I would have thought they might have been exempt, such as police, cooks, and so forth. Listen to what the court said. It is the controlling case with respect to employment thus far.

> The speech or debate clause is intended to protect the integrity of the legislative process by restraining the judiciary and the executive from questioning legislative actions. Without this protection legislators would be inhibited in and distracted from the performance of their constitutional duties.

You bet distracted. When someone from the Department of Labor comes to your office for inspection and you happen to sit on the committee that appropriates their funds, talk about separation of powers, talk about inherent conflict, talk about ludicrous proposals, talk about trashing the U.S. Senate and trashing the Constitution in the name of reform.

They went on to say:

> Where the duties of the employee implicated speech or debate concerns so will personnel actions respecting that employee. The standard for determining immunity is whether the employee's duties were directly related to the due functioning of the legislative process, and they so held.

And they went on.

In a case that some Members here who have been here a bit longer than I might remember, the case of Gravel versus United States, 1972, I believe that Gravel was a U.S. Senator from the State of Alaska. The U.S. Supreme Court said, in construing separation of powers and speech or debate, the following:

> Rather than giving the clause a cramped construction, the Court has sought to implement its fundamental purpose of freeing the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator.

You know, Madam President, I have been here for 11 years. I have seen a lot of very interesting legislation coming down here. I have seen hard-fought legislation with honestly-held divisions on both sides. I have watched remarkable performances by people like my friend from Missouri, Senator DANFORTH. We served as attorneys general together at one time, labored for 2 years on important legislation that affects this country. There is not a scholar I have spoken to about this that does not say you cannot do it, it will get stricken down. I have heard of suggestions that is all right, pass it anyway, and send it to the court.

I hear that from people who I often hear from the same mouths that we have courts that are too activist, they ought to stay out of our business.

I believe that the Senator from Oklahoma and the Senator from Colorado are correct. We ought to apply these laws to us in any way we wish. In fact, if we want the unionization of our employees, which I do not particularly think this is a very good idea in this kind of place, if we want it, let us legis-

late it and let us have our own little NLRB. Let us not have executive departments come in our offices and dictate to the people who legislate the law and policy of this country as to how we run our offices.

I will end where I started: We ought to take care of this institution. We will all be here very briefly. We will pass through here, when you look at history, like a blink. We think we are all so important, we have done such great things. I guarantee you very few of us will have a place in history, very few. Our service, be it 6, 12, 18 years, whatever, is a blink in the history of America.

We should care about this institution. We should care about what the Founding Fathers cared about. We should maintain separation of powers, we should respect the speech or debate clause. We should not injure the future of this institution. We can do all of the things that are proposed, but do them the way the Constitution said we should do them, and that is to keep our own house in order.

I hope that someone will move to table this and that we defeat it promptly, as I hope we will the follow-on amendment. There are times when personal political advantage should take a second place and a back seat to the value of this institution. I thank the Chair.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, this amendment has just come to me as a member of the Rules Committee, and I have, with the help of my able assistant, tried to analyze it. It is a rather startling proposition to me.

Last year, the Senate applied the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act, and the Americans With Disabilities Act to itself. This is a provision, as I understand it now—and I would urge the sponsors to correct me if I am wrong—that would apply to the Senate the Fair Labor Standards Act and Equal Pay Act. It would also apply to the National Labor Relations Act, which does not even apply to the executive branch. It is the Federal Labor Relations Act that applies to the executive branch and allows some union activity on the part of the employees in the executive branch.

This would apply the Occupational Safety and Health Act of 1970 to the Senate. That does not apply to the executive branch either. That is a concept of a legal duty to provide a workplace free from recognized hazards. It is something that perhaps we should explore.

There have been some people that have asserted that perhaps this might be something that would require us to expand the buildings of the Senate. I am not sure that is correct. But in any event, there are areas of Senate employees where perhaps, because of the use of machines, because of the print shop, because of the air quality in some of the areas where there is actual construction or maintenance activity going on that we should explore that.

The Freedom of Information Act would apply to the Senate. The Senator from New Hampshire has already commented on that. I do not want to duplicate his comments.

But I would say that as a practical matter there are constitutional provisions that cover the right of a constituent to petition Congress. We have in our files letters written by many people concerning activities of the executive branch, of the judiciary, of local governments. I think it is entirely against the spirit and concept of the U.S. Constitution to apply the Freedom of Information Act to those that are entrusted with the concerns of their constituents. It is not, in my opinion, a concept that ought to be pursued by this Senate. This would apply the Privacy Act of 1974 to us. It would apply the Age Discrimination Amendments of 1975, which, incidentally, only apply to grant recipients; and I do not know of any grant recipient in the Senate. I am not sure who we are trying to protect in regard to that.

It applies the Equal Employment Opportunity Act of 1972 to the Senate. Actually that act extended the 1964 Civil Rights Act to the executive branch and the 1964 act already applies to the Senate. It applies title VI of the Ethics Act of 1978 regarding the appointment of special counsel. The reasoning for applying that to Congress escapes me because really it is to try to avoid conflicts of interest within the executive branch. For us now to put the Congress under a law that was drafted by Congress with the approval of the executive branch to eliminate internal conflict within the executive branch seems to me again a misguided concept.

When I was in the State legislature, I would have called this an amendment to love a bill to death. It is an amendment that comes up to try and make an impression that somehow or other it is an improvement to the bill, when actually it is an amendment that could only lead to the destruction of this bill.

I am here and prepared to debate or answer any questions from the proponents of this amendment. I really cannot believe that it is seriously presented to the Senate for action. At least half of it could not apply to the Senate by the terms of the laws that would be incorporated by this amendment. And the others, particularly the Freedom of Information Act, would be a total mistake as far as this body is concerned.

I really cannot believe that the sponsors of this amendment are serious about the concept of the Freedom of Information Act, putting the Senate under that act, and putting the Senate in the position where a court might order the release of records of the Senate that pertain to items that are taken under the rules of the Senate in confidence, or taken for the purpose of protecting the security of the United States. This has not been well thought out in my opinion.

Mr. NICKLES. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. NICKLES. I would like to inform the Senate, we did not include freedom of information in the amendment.

Mr. STEVENS. It was a list that was shown to me. I apologize to the Senator from Oklahoma, Madam President, because as I said as I started, I have not seen until just this minute the latest draft. And if that is left out, I am happy, and I thank the Senator for that.

Were there other items that I mentioned in my discourse that are not contained in the amendment now?

Mr. NICKLES. Well, the Senator is correct. I think the Senator mentioned a couple of others that are not.

Let me just touch on the ones that are not included in the so-called Grassley-Mitchell because it is not quite as comprehensive as your list.

The National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Occupational Safety and Health Act, the Privacy Act of 1974, title VI of the Ethics in Government Act of 1978. Those are the only ones that we included that are not currently covered through the Senate Ethics Committee.

Mr. MITCHELL. Madam President, might I ask if the Senator would yield to permit me to ask a question, through the Chair, of the Senator from Oklahoma?

Mr. STEVENS. I am happy to yield to the leader.

Mr. MITCHELL. Madam President, I inquire of the Senator, if the purpose of this, as stated repeatedly by the Senator from Oklahoma and the Senator from Colorado, is to subject the Congress to all of the laws to which it subjects others, why was not the Freedom of Information Act included in here?

Mr. NICKLES. I would tell my friend and colleague, I had intended on doing it and I also realized I would lose some votes in the process of doing.

Mr. MITCHELL. So it is not the principle?

Mr. NICKLES. Well, I would also say there is a difference between the Freedom of Information Act and laws that pertain to administration, laws that pertain to employment, laws that pertain to civil rights. We kept almost all these targeted on laws that pertain to the above: civil rights law, employment law, administrative-type laws. The Freedom of Information Act really did not fall into that same scope.

Mr. MITCHELL. Madam President, I think it is rather obvious that there is not any principle involved here. Because, at the first suggestion that a few votes might be lost, principle was abandoned and this other provision was taken out. I think that exposes this amendment for what it is.

Mr. STEVENS. Madam President, the problem I have, even with some of the laws that are left in this amendment, they are laws that the Congress has already seen fit not to extend to the executive branch.

With regard to OSHA, we did not cover the executive branch either because neither branch of Government is doing many of the things that occupational health and safety laws are designed to cover. And I think that there is some feeling here that perhaps if we extend these laws to the Senate, perhaps the Senate might wake up and change some of these laws that the small businessmen find oppressive.

But, Madam President, that is lost in this bill. If this amendment is designed to make some people mad enough to vote against civil rights, I do not know anyone here on the floor that is going to do that. I really do not know if anything is going to be gained by applying OSHA to the Senate when it does not apply to the great monolithic executive branch that has most of the Federal employees of the United States.

I might ask the sponsors why would you apply it to the Senate if it does not apply to the executive branch as a whole? What is to be gained from that?

I hope someone would answer.

I would also like to know why the amendment would apply the Privacy Act to the Senate. That is an act that is designed to permit individuals to obtain from Federal agencies any records pertinent to the individual, and it protects such information from disclosure to third parties.

I am a former chairman of the Ethics Committee. My friend from New Hampshire is currently vice chairman. I know of no instance where an employee did not have access to Ethics Committee records that pertained to that employee. But if there is some reason for us to change our rules, I would be very pleased as a member of the Rules Committee to suggest any changes to make sure we protect those employees, but that is not the reason it is offered here.

Somehow or other there is some feeling that if it is made applicable to the Senate, that it becomes so burdensome that it becomes something this bill cannot carry. That is my opinion, and I decry the tactic. I believe we ought to get down to the business of passing a civil rights bill.

I have been quoted in the paper as having been a little outspoken at the White House. I do not think I was any more outspoken there, Madam President, then I am here in the Senate. I believe it is time the American people had the Congress get together and decide what should be improved in the Civil Rights Act of the United States. Only serious amendments should be presented here to what I consider one of the most serious bills the Congress will face in its waning days in this first session.

I do not understand this amendment. I am dead set opposed to it. I hope we have the courage to start recognizing these amendments for what they are. They are not amendments designed to improve the civil rights of the Senate employees or to protect them in any way. Most of the protections that are in this amendment are already available through the procedures that the Senate has established by rule. And if there are some that are not fully protected—I see the chairman of the Rules Committee here now—I think the two of us could assure the sponsors of this amendment we would expeditiously hold a meeting in order to determine what the defects of the rules are in regard to protection of any of the employees of the Senate.

But these amendments in my judgment are—I come back to what the Senator from New Hampshire has said. I am glad he is here. But from the point of view of the legal relationships of the three branches, in terms of the historic balance between the three branches of our Federal Government, I think this is an attempt that will lead us down the path to destroy the independence of the congressional branch. I hope the Senate will oppose it.

Madam President, I am prepared to make a motion to table any time we are ready.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, before we have a tabling motion, and I expect one in the not too distant future—maybe to notify our colleagues—I would like to respond to the majority leader who made the comment that this was not principled because I left out the Freedom of Information Act—and I mentioned one of the reasons I left it out was I would lose some votes. That is a fact. But I will also state the Freedom of Information Act does not apply to the private sector. This is my primary reason for excluding the Freedom of Information Act.

I happened to be a business man before coming to the Senate and I happen to have a little grievance against Congress exempting themselves from laws that they put on the rest of the private sector, and then go out and say, "Private sector, be competitive; private sector, create more jobs; private sector build, and expand." As a small business man, you cannot succeed when you have a continuous parade of laws that are very well intentioned, but that infringe on your capability to do so.

Maybe if we in Congress lived under the same laws with the same standards, the same procedures, and the same remedies as the private sector, we might have a little more understanding and a little more sympathy for what it is like in the real world to try to struggle and survive under the laws passed by this body.

I happened to be involved in a company in Oklahoma that lost money for several years. I happened to be involved in a company that was involved in a case which fell under one of the laws listed in my amendment, a company which went to district court and before a district court judge. We won the case, but we lost thousands of hours and thousands and thousands of dollars in legal fees. Our management was tied up for 2 years on a frivolous case.

I think Congress needs to learn what it is like to be under these types of laws. I do not see any reason in the world why we should not be under the laws that I have enumerated. My colleague mentioned some problem with freedom of information. I personally think if it is good enough for the executive branch, maybe it should be for Congress. However, the Freedom of Information Act does not pertain to the employment and labor laws which affect the private sector as the rest of the laws that we have before us in my amendment do.

I have heard my colleagues say we are covered through the Ethics Committee. But there is no right of appeal through the judiciary process as there is for the rest of the American people. We should allow a person to have his or her day in court.

I compliment Senator GRASSLEY because he has been steadfast in trying to ensure private right action through the Federal courts.

I know these laws that I have included in my amendment are not all-encompassing. My amendment does not cover every little nook and cranny from which Congress has exempted itself, but I have tried to, as much as possible. I think Congress should live under the same laws we put on everybody else.

My colleagues have said it is unconstitutional. I happen to disagree. The law at most is unclear. My colleague from New Hampshire read a couple of court cases. I wanted to give a little additional language on those two cases. He mentioned *Davis* v. *Passman*, 442 U.S. 228, 249 (1979) *Browning* v. *Clerk, U.S. House of Representatives*, 789 F. 2d 165 (1989).

First, I would like to comment on *Grave* v. *United States*, 408 U.S. 606 (1972). The court said that the speech and debate clause is "not all-encompassing" and does not cover activities that are not "part and parcel of the legislative process."

The decision of *Forrester* v. *White*, 484 U.S. 219 (1988) indicates that a Senator's or Representatives's hiring or

firing decisions are not "legislative" acts. They would not be absolutely immune from review under the speech and debate clause; but, instead, are "administrative" acts that are not entitled to absolute immunity.

Under the Passman case, Congress has the right to waive its immunity. Chief Justice Burger, joined by Justice Powell and now-Chief Justice Rehnquist, said, "Congress could, of course, make * * * remedies for violations of constitutional rights available to its staff employees—and other congressional employees—but it has not done so."

My point is without getting involved in a major debate on certain court cases is that these court cases at best are unclear. I read the Constitution. I have read it, just as everybody else has: "* * * and for any Speech or Debate in either House, they shall not be questioned in any other Place."

I think it is a broad expansion of the speech and debate clause to say that we want no administrative oversight or enforcement of law. We want to have all of our own enforcement. Would that not be nice for the private sector, to say oh, yes, we will have our own enforcements for all these laws? I think that would be a serious mistake.

Mr. STEVENS. Will the Senator yield?

Mr. NICKLES. In just a moment. I think this is a matter of principle. I think when I walk downstairs in the basement of this Capitol and I see a lot of things that are in the hall, I remind myself if Congress were covered under OSHA, there would be penalties imposed because they have a lot of things thrown about the hall that a person would be cited for in the private sector under the law. And my guess is the paint shop or the print shop, some of those other facilities we have, should also be covered.

If OSHA is designed to protect the employees of the private sector it also should be protecting the employees of the legislative branch as well.

Mr. President, I do not think that Congress continuing to exempt itself from laws in the right thing to do. I believe this is the right time. It is the vehicle to do it, and I hope that we will adopt this amendment.

Mr. STEVENS. Will the Senator yield for a question before he yields the floor?

Mr. NICKLES. Yes.

Mr. STEVENS. Let me read some things. I want to make sure I understand. In response to the Supreme Court decision that the Senator mentioned, the Senate last year applied the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act, and the Disabilities Act to the Senate. The Senator is aware of that, is he not?

Mr. NICKLES. The Senate applied it to the Senate through the Ethics Committee with no judicial review. In the private sector, if the employee is not satisfied with the result, they have the right to judicial appeal. Our employees do not have that right.

Mr. STEVENS. Can the Senator tell me one employee who sought appeal, any one employee who complained of the treatment that he or she received from the Ethics Committee?

Mr. NICKLES. I will tell my colleague, my point is not to say that we have committed countless grievances on our employees. My point is we should give our employees the same rights, procedures, and remedies that we give the private sector, not that the Senate has been cruel in its treatment of employees. I think quite the contrary. I think we treat our employees very well. I just believe the remedies and the procedures should be identical for us as it is for the private sector in order to better understand how these laws actually function and operate.

Mr. STEVENS. As to the National Labor Relations Act, if the Senator will yield further, that does not apply to the executive branch. Does the Senator really want the unions of this country to organize the employees of the Senate committees and Senate offices and the restaurants and the police and the operators of our subway? Is that the Senator's goal?

Mr. NICKLES. I might tell my friend and colleague from Alaska that the Federal Labor Relations Act applies to the executive branch, instead of the National Labor Relations Act, which applies to the private sector. My amendment focuses on laws applicable to the private sector.

Mr. STEVENS. The Federal Labor Relations Act applies to the executive. The National Labor Relations Act, cited in the Senator's amendment, does not.

Mr. NICKLES. I am well aware of it. My point is that I am trying to make the Congress live under the same laws we put on the rest of the country.

Mr. STEVENS. The Senator really wants us to find labor organizers organizing the committees of this Congress?

Mr. NICKLES. Again, I have to correct the Senator. The National Labor Relations Act, which passed in 1935, gives employees the right. I did not say I would petition and lead their organizational drives. I am just saying they have the right in the private sector; they should have the right in the Congress, as well.

Mr. STEVENS. How about OSHA? That does not apply to the executive branch.

Mr. NICKLES. I might tell my colleague that OSHA does apply. The Government itself is exempt, but each agency is required to set up its own OSHA-like program, and we do not do that in the Senate.

Mr. STEVENS. Is the Senator familiar with the rules and regulations issued by the Architect of the Capitol? It is a Capitol-wide administration for the health and safety of our employees.

Again, as a member of the Rules Committee or as a member of the Ethics Committee, I remember no Senator and no employee ever coming to either of those committees and saying we are not properly protected.

What I am trying to get to is what is the basic reason for the Senator's amendment? Is not the Senator's amendment to try to put a burden on the Congress that he perceives to be a wrongful burden on the private sector?

Mr. NICKLES. No, the Senator is incorrect. The purpose of my amendment is equity. The purpose of my amendment is fairness. I am personally tired of picking up newspaper articles, like one that was in the Wall Street Journal, "Rights Bill May Not Apply to U.S. Senate."

I do not want to go to town meetings. I happen to hold town meetings, and I am kind of tired of people saying, "I see you exempted yourself from all these laws. Don't you think it is right for you live under the same laws as you put on the rest of the private sector?"

The answer to that question for me has always been "Yes." I have wanted to do something about it. Some of us have worked on this a long time, and again I compliment Senator GRASSLEY for his leadership. But I think it is time we do something.

Mr. STEVENS. I thank the Senator.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I gather there are two or three more who want to speak, and I will not speak for very long. I want to say I have no greater respect for anyone, and I say this in all honesty, than I do for the new Senator from Colorado [Mr. BROWN]. I do not know him well, but I just admire and respect him. I think he feels deeply about this issue, and I think tonight on the floor of the Senate he expressed himself in a way that made me proud of him.

I could not have more respect than I do for the Senator from Oklahoma. But let me suggest I am not a constitutional lawyer, if I ever was, but certainly after the last 23 or 24 years without seriously reading a constitutional case, I am going to defer to Senator RUDMAN.

I do believe that it makes practical sense that when you have an independent Congress—and we are just a piece of that Congress—it means independent. You do not have to read a whole bunch of fancy words; we are independent. Independent from whom? Independent from the executive branch. And we are supposed to be. We are independent from the judiciary, and we are supposed to be. That is what those people who set this magnificent framework in place had in mind.

The distinguished Senator from New Hampshire suggested some ways, as did the Senator from Alaska, that we might just speculate about this separation falling apart on a day-by-day basis, and what it might yield. They did not even mention that you might have a Democratic President with everyone around him of his party doing his business, doing his bidding. And think how those executive branch people would react to the Republicans. They would take a look and find out which law are they violating, and it is about 3 months before an election; let us have a little fun with that one. You will be innocent, but the election will be over. What we are doing that for?

If we want to pass these laws, do what the Senator from Alaska said: pass them for the Congress, and let somebody here enforce them and set some other group that we pick to be the final say on whether we did it right or not.

Frankly, I cannot imagine that my constituents at a town meeting are going to suggest that the people who work for me in New Mexico, wonderful people—five in a little office in Las Cruces, six in Albuquerque, three in Roswell, four in Santa Fe—that they are worried about, at a town meeting, whether those people are covered by these laws. Just imagine; they would not dare ask whether Ernie Vigil in Santa Fe, 64 years old, worked for me for 19 years—I am just like a brother to him, and we have to apply some of these laws to make sure we are taking care of him right.

What is happening is we are trying to make an excuse because we do not like our laws, and our people do not like our laws. We are saying tonight: Well, we are going to vote with the people; we are going to put them on ourselves, and that is going to make us all feel good.

Let me tell my colleagues, one of our Senators at lunch—and I will not say who it was unless he wants to come down here and say it, but he has a lot of savvy. He said, "If you think passing these laws and putting them on our shoulders is going to make us change our laws with reference to the business community of America," as I recall him saying, "it will never happen. It will hurt Senators before it ever gets changed, make it harder to get Senators to run for office because it just will not work." I think he is right.

So from my standpoint, I believe the Senate is a very special place, and if we are to down time or downturn with the American people when they do not feel very good about us, I submit we are not going to get better 3 or 4 years from now because we made all these laws applicable to this place. We are going through something that we are going to have to get out of on our own, and establish the fact that we have some courage and ability to explain ourself and not find easy ways out of things. That is essentially why they are a bit angry at us.

I submit, and again I do not lay any blame anywhere, but this is kind of one of those times where we are trying to get out of something easy. We have some laws that ought to be changed, and because we cannot get them changed, we are putting them on ourselves. And we are going to go home and say, "Isn't it nice; we put those laws that are bad on us, too." And it will not do a bit of good for anyone, except perhaps at a few town meetings for the next 6 months, and then it will disappear. We can say we did it, and will that not be wonderful.

I said to my friend—he was absent from the Chamber when I said I thought his remarks were marvelous, well intended. I have great respect for him, but I just happen to think he comes down on the other side with reference to what this will do and will not do.

I am going to close by saying, from my standpoint, I have been here a long time. Frankly, this is a rather special place.

There is no doubt about it, the Constitution intended it to be a very special place. I really do not believe we ought to make it more difficult to get people to run for Senate offices. It is already difficult enough. I do not think we ought to make it easier for anyone to make it hard for us to be Senators, and that is what this will do. I do not think we ought to let the executive branch of Government or anyone outside of the Senate jurisdiction enforce rules and regulations with reference to those who serve us in this body. If you want to include the policeman, you want to include those who are part of operating it, let us study it carefully and put them under the laws that apply to every one of us but not those who work for us and those who carry out our requests and who help us do our job.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, the Senate faces a serious problem, and we, as the 100 individuals who at this moment in history comprise the Senate, face that problem. In a general sense, we are all, or should be, saddened and distressed by the degree to which this institution and those of us who are the institution have fallen into such disrespect on the part of the American people. We have reached the point where a healthy skepticism about public officials, which has been the norm through our Nation's history, has become an unhealthy cynicism with widespread distrust and ridicule of the institution.

The Senate is not this building. The Senate is not these desks. The Senate is not the offices which we inhabit. The Senate is us, the individuals that are involved, the 100 people who comprise the Senate.

Perhaps the saddest thing to me about this entire debate is the willingness of some Members of the Senate to seek to exploit and to exacerbate that public sentiment for what I believe will inevitably be a short-term political gain. Oh, it is easy and popular to stand up and say we should be subject to all of the same laws and rules that the people of this country are subjected to, but it is obvious from the debate that nobody really means that. Nobody is proposing to repeal all of the privileges that we as Senators have.

The most significant, most meaningful, most powerful privilege that distinguishes Members of the Senate from others is the speech and debate clause of the Constitution. Does any Senator here favor repeal of that? Does any Senator say that we ought to be just like everyone else? There are only two people in Oklahoma who have that privilege. There are only two people in Colorado who have that privilege. There are only two people in Maine who have that privilege. Is anybody here willing to stand up and say we ought to repeal that part of the Constitution because it distinguishes us from others, because it creates a privilege that no other American has and no other American can hope to have, that in the conduct of our duties we cannot be held accountable in any place by any person or any institution for what we say?

If you do not really want to make us subject to all of the same provisions of law as others, what is the purpose of this? Well, the purpose is transparent. First, it is to kill the civil rights bill. With the agreement reached between the administration and Senator DANFORTH, for which Senator DANFORTH deserves and has received the credit and gratitude of all Americans, the prospects for defeating this bill on the merits of that issue are in question.

We are all familiar with the tactic of taking a bill that otherwise has support and killing it by adding something that does not have that broad support. And so in the guise of reducing Senators, somehow this privileged class, in the guise of making this privileged class unprivileged, which would not be the result of this amendment because by far the largest privilege is untouched by this amendment and no one proposes to touch that, we succeed in killing the bill that cannot be killed by a direct attack on the principal provisions.

Now, Mr. President, I said we face a problem in the specific, and that is, how do we deal with this problem so troublesome to all of us? The one thing that has been said by the proponents of this legislation with which I agree is that this is a difficult and troubling problem. It is obviously politically at-

tractive. It is very politically attractive for a Senator to be able to come up here and say over and over again, all we want to do is make the Senate subject to the same laws. It has powerful appeal and resonates through the people, particularly at a time when public esteem for the Congress is so low.

Well, of course, the amendment affords the opportunity for that kind of political speech and that kind of political gain, but the fact that that is political in nature does not obscure the reality that this is a very serious problem that we face.

What we should be trying to do is to figure out a way in which the substance of these various laws, the protection of the rights of individuals, can be assured in a way that is consistent with the Constitution. You can address the problem in a serious way by trying to figure out is there an approach that, while not mechanically identical to the procedures employed in these laws, in fact accomplishes what ought to be our objective, and that is the substantive objective of protecting people as these laws intend that other people be protected. But that is obviously not the intent of this amendment.

Each of these laws has a different application. They have different enforcement mechanisms. They have different penalty provisions. No effort is made to distinguish that fact. For example, the National Labor Relations Act and the Occupational Safety and Health Act exempt all Federal employees. The others do not. No distinction is made between them. For example, the National Labor Relations Act is enforced by a quasi-judicial board appointed by the President with the consent of the Senate. The Fair Labor and Equal Pay Acts are enforced by the Department of Labor. No effort is made to distinguish between those. Some of these laws provide for civil remedies, others provide for criminal penalties. No effort is made to distinguish between those. What we are told is that the only way you can guarantee a substantive right is to follow in each instance an identical procedure under each of these laws. We all know that not to be true. It defies common sense. It defies reality. All across this country different States apply different procedural remedies to attain similar results. We are told that there must be a jury trial as provided in some of these laws; otherwise, you are not entitled to the right. Well, there are all kinds of grievances in our society which do not entitle a person to jury trials.

Do we suggest then that the only means by which a remedy can be obtained in our society is through a jury trial? That is an amazing and a new concept in American law. There are 12 laws mentioned here before the Freedom of Information Act was taken out for, admittedly, the political reason of not wanting to lose a few votes—11, and 4 of them are already applicable to the Senate. But we are told they are repeated here because the process by which the rights are protected are not mechanically identical to the process by which those rights are protected in the private sector.

Who has ever said, or has ever accepted the premise that the only way you could achieve a desirable result is to adopt an identical process? As I said, it is contrary to common sense, contrary to reality, contrary to the whole history of Anglo-Saxon law, going way back before the United States was even a country.

Mr. President, for the past 3 days I have met, discussed, and negotiated with the distinguished Senator from Iowa in an effort to try to figure out if there is some way that we can accomplish what ought to be our objective, and that is protecting, and providing to employees of the Senate substantive protections of law in a way that is consistent with the Constitution.

I do not know if it can be done. I know the distinguished Senator from New Hampshire, who has been described as the most able lawyer in the Senate—I think a description which he deserves—feels it cannot be done. He feels that an attempt to bridge that gap cannot be done in a consitutional manner.

I am not given to rash predictions, but I will say this: In my judgment this is the most blatantly, flagrantly, obviously unconstitutional proposal that I have seen since I have been in the Senate. This makes no effort whatsoever to approach this in a serious, responsible way. It makes no effort whatsoever to try to accommodate the legitimate objective of protecting the rights of individuals in a way that is consistent with the Constitution.

So I do not think there is the slightest chance that this could be found constitutional

Each Senator has individual views, and I respect the judgments of the Senator to the contrary. I express merely my own personal opinion on that.

I urge the Senate to reject this amendment, politically difficult as it may be, because if you vote against this you are subject to the charge which we have all heard here, "Well, do you not want the Senate to be treated just like everyone else?" Even though we all ought to remember that the people saying that do not really mean it because they are not prepared to surrender the greatest privilege of all, the privilege which more than any other distinguishes the Senate from others in our society.

So I hope my colleagues will join in rejecting this amendment and permit us to get on to pass the civil rights bill, a very difficult, a very controversial, and a very important bill—with respect to which we have debated and labored—and has been subject to great controversy for a long period of time.

I hope that now, as we are all on the verge of doing so, we do not permit it to be derailed by this transparent effort. A vote for this amendment is a vote to kill the civil rights bill. So that everybody understands, that is the effect.

Can we do this in a way that does, in fact, accomplish what I think we all want to accomplish; that is, to provide these protections in a way that does not violate the Constitution and undermine the separation of powers? I must say in all candor, I do not know. We have been trying for days to try to figure out a way to do that. I cannot say to the Members of the Senate that it is possible to achieve that in a constitutional manner.

I can say that this clearly will not do so, and I hope very much that our colleagues will permit us to go forward and to pass this bill.

I yield the floor.

Mr. NICKLES. Mr. President, I would like to respond to the majority leader with just a couple of comments. One, he says it is the intention of this amendment to kill the bill. That is totally false. This Senator, Senator PACKWOOD, Senator BROWN, and others, I think, have indicated their intentions to support the bill. It is not our intention to kill the bill. It is our intention to try to restore some kind of equity.

I heard the majority leader say clearly this is unconstitutional. He said that about four times. I read the Constitution. The speech and debate clause does not say the Congress shall be exempt from all laws. It does not say that. The speech and debate clause says in either House they shall not be questioned in any other place. It does not say let us exempt Congress from all law.

As a matter of fact, the Federalist Papers, reported by my colleague, Senator BROWN, said we should live under the laws we put under the masses of people. I happen to think he is correct.

I might mention, too, there are Supreme Court cases which I have quoted earlier—I will not repeat those quotes, but basically they state the speech and debate clause does not limit Congress, or does not limit the functions of our administrative functions. There may be immunity from legislative functions, certainly speech on the floor of the Senate, but not administrative functions such as the conduct of our offices—hiring, firing, et cetera.

Mr. President, I yield the floor.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, earlier the Senator from Alaska indicated that he would move to table. He can if he wants, or I will, whatever the desire turns out to be, or I could withhold that.

I would simply like to add my strongest sense to what the majority leader

has said and what the minority leader said earlier today. At the time we were debating the McConnell amendment, Senator DOLE said that he did not know whether the McConnell amendment was a deal breaker, but he did know for certain that the Nickles amendment is a deal breaker.

Whether it is the intention or not of the Senator from Oklahoma, there can be absolutely no question whatever that if we adopt this amendment all bets are off, there is absolutely no chance that this bill, as it would be passed, would be passed by the House; no chance at all; no chance that we would avoid a conference and, in my opinion, no chance that this would become law.

I said to the Senator from Oklahoma earlier in the day, if you really want to do this, can you do it on somebody else's bill? I do not think that is just normal pride of authorship. I suppose everybody would say that about the bill that he has been working on.

But, Mr. President, it is time that we put the question of civil rights beyond the partisan agenda in America and reestablish a national consensus on this issue. It is a time that we stop the bickering over a civil rights bill. And for that reason, my hope is that whoever moves to table this amendment will be strongly supported by the majority of the Members of the Senate.

Mr. MITCHELL. Mr. President, if all debate has been concluded, I am going to suggest the absence of a quorum to permit the distinguished Republican leader to come to the floor. He indicated he wanted to speak briefly on the amendment.

I would like to honor that request.

So if no other Senator wishes to address I have notified his staff. He asked to be notified when we reached this point. I will, therefore, suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I have not heard a great deal of debate, but I have indicated earlier to the Senator from Oklahoma that this amendment would be troubling in the view of this Senator.

This would clearly, I think, mean we would have a conference on the House side, and it seems to me that from the standpoint of the President of the United States, who wants this bill, and the Senate, I think there will be an overwhelming vote for the bill, and that would not be an appropriate step. We would like this to go to the House, and for the House to take this bill, so it will reach the President's desk next week, or maybe at the end of this week.

I know that the amendment is well-intentioned. I know the Senator from Oklahoma spent a great deal of time on it. I know the temperatures flare in here when you start talking about how it may apply to Senators. But I think there is one shortcoming. If somebody gets a judgment against a Senator, we would turn it over to the taxpayers to pay the judgment. So I am not certain whether in fact we are being punished or being held in the same standards that an employer might be held to in the private sector. Maybe those questions have been raised earlier.

I just say, for reasons we said earlier here, when we agreed on some of the legislative history and turned to the Senator from Utah to the Senator from Massachusetts, the managers, who were indicating they would make every effort to defeat what might be considered a deal-breaker with reference to the entire civil rights bill, I will oppose the amendment.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I support the pending legislation. As an original cosponsor of this bill, I am delighted to see that the basic elements of the bill have now been agreed to by a majority of the Members of the Senate and by the President.

It appears that the essential elements of this bill will be enacted into law. I think that is highly desirable, because the decision of the Supreme Court of the United States in Griggs had stood for some 18 years, until it was reversed by the Supreme Court of the United States in Wards Cove. I submit, Mr. President, that it was reversed by a revisionist Court, not by a conservative Court.

The opinion in Griggs, written by Chief Justice Burger for a unanimous Court, was conservative in finding business necessity in interpreting the Civil Rights Act of 1964. That decision stood unchallenged for 18 years, until 1989. The Court is a revisionist Court. And it was especially problemsome to me to see four of the Justices who overturned Griggs, having gone through the nomination process in the past decade, and having sworn not to change the law but only to interpret the law, to in fact make that change. So I think this bill is a significant step forward.

In terms of the pending amendments being an impediment to the passage of the bill, I think that is a serious consideration, as the distinguished Republican leader has just outlined. I am not sure about all of the policy ramifications of the amendment which has been offered by the distinguished Senator from Oklahoma. There are a great many bills which would cover the Congress of the United States—the Senate of the United States at least. It may well be that some of that may go too far.

There is an amendment which will be offered by the distinguished Senator from Iowa [Mr. GRASSLEY] which, as I understand it, is limited to covering the Senate on the civil rights bill. Senator GRASSLEY has offered that amendment twice in the past, and on each of those occasions, I have supported Senator GRASSLEY on it.

So that supporting Senator GRASSLEY later this evening or tomorrow, whenever it may come up, is not a response on my part to any current criticism of the Congress of the United States. I think the Congress—the Senate and the House—will withstand that criticism.

I think that, as a general proposition—unless there is some very strong reason to the contrary—Congress ought to submit to the same laws which are applicable to other citizens.

I disagree strongly with the statements which were made earlier that this is a matter for political advantage. As I say, I had said that last year and the year before, whenever Senator GRASSLEY introduced his bill to cover the Congress, at least the Senate, with matters which were applicable to other citizens.

I do want to make a few comments on the constitutional issue which has been argued earlier this evening. I have been asked by Senator GRASSLEY, last Thursday when I met him in the subway, if I would be a cosponsor of this amendment, and I said I would. Then I got a call from Senator GRASSLEY on Sunday asking me if I would attend a meeting yesterday—which I did—in the majority leader's office, and we had a brief discussion at that time about the constitutional implication of the speech and debate clause.

My own view, Mr. President, is that it is not clear at all that the speech and debate clause would preclude the pending legislation offered by the Senator from Oklahoma, or the amendment to be offered by the Senator from Iowa. I say that based upon some research which I have done, which is not as exhaustive as I would have liked, but it was undertaken after the meeting held yesterday afternoon in the majority leader's office.

There is a decision of the Supreme Court of the United States in the case of Davis versus Passman, reported at 442 United States Reports 228, which deals with a claim by a former congressional staff member, who brought suit alleging that the defendant, who was a U.S. Congressman at the time the case commenced, had discriminated against the staff member on the basis of her sex, in violation of the fifth amendment, by terminating her employment as a deputy administrative assistant.

The Supreme Court of the United States, in a very lengthy footnote, ana-

lyzed the speech and debate clause and says in footnote 11 at page 2272 of 99 Supreme Court Reporter, "The purpose of the clause is 'to protect the integrity of the legislative process by insuring the independence of individual legislators.'"

Then the Supreme Court says further in the footnote, "The en banc court of appeals did not decide whether the conduct of respondent was shielded by the speech or debate clause. In the absence of such a decision, we also intimate no view on this question."

From this decision, Mr. President, I conclude, at least so far as the Supreme Court of the United States is concerned, that it is an open question as to whether the speech and debate clause covers a firing of a congressional staff member by a Member of the U.S. Congress, which is pretty close to the kind of considerations which are involved in the civil rights bill on the issue of nondiscriminatory hiring and firing.

The case of Gravel versus United States has some relevance to the issues which are pending here, and that case involved the situation where a Senator had made available certain documents which were not to be disclosed, the Pentagon papers, and the Supreme Court of the United States in that case said as follows—this appears at page 2627 of 92 Supreme Court Reporter:

> The heart of the clause is speech or debate in either House. Insofar as the clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

The Court goes on to say:

> While the speech or debate clause recognizes speech, voting, and other legislative acts as exempt from liability that might otherwise attach, it does not privilege either Senator or aide to violate an otherwise violate criminal law in preparing for or implementing legislative acts.

The activity here involved committee hearings which are very, very close to the heart of the legislative function.

I noted the case which the distinguished Senator from New Hampshire [Mr. RUDMAN] cited, Browning versus the Clerk of the U.S. House of Representatives, decided by the U.S. Court of Appeals for the District of Columbia, articulating a very broad interpretation, as the court said a liberal interpretation of the speech or debate clause, one which was not quite so liberal as the interpretation by the Supreme Court in Gravel. Certainly the Supreme Court did not reach that issue in Davis versus Passman.

There have been some intervening cases after the Browning decision. The Browning case was a case where the U.S. Court of Appeals for the D.C. Circuit said that the constitutional protection precluded an inquiry into the firing of a court reporter.

There was later the decision by the Supreme Court of the United States in Forrester versus White which involved the situation where an Illinois State court judge had hired the petitioner as a probation officer, promoted her, and then discharged her, and the employee than filed a damage action in Federal Court alleging that she was demoted and discharged on account of her sex in violation of the equal protection clause of the 14th amendment. The Supreme Court of the United States in that case said that judicial immunity did not apply. The Court noted specifically at page 542 of 108 Supreme Court Reporter, in referring to the speech or debate clause, that even here, however, the court has been careful not to extend the scope of the protection further than its purposes require, and it looked very much to the issue of the purposes of the immunity.

The importance of Forrester, Mr. President, as it applies here is that it was picked up in the case of Gross versus Winter, again by the U.S. Court of Appeals for the District of Columbia, in which the issue raised was whether a legislative researcher who was fired could maintain her action for a discriminatory firing or whether the absolute immunity of the legislative branch precluded a judicial inquiry on that subject. The Court of Appeals in Gross versus Winter came to the conclusion at page 172 of 876 Federal Reporter, second series, that Browning was undermined by the Supreme Court's later decision in Forrester.

So that the strongest authority, which is Browning, to limit legislative immunity under the speech and debate clause, has been undercut by Forrester, as the Court of Appeals said in the later case of Gross versus Winter. All of this leads me, Mr. President, to the conclusion that the issue as to whether the pending amendment by Senator NICKLES is precluded by the speech and debate clause is very much an open one, as is the question with respect to amendment to be offered by Senator GRASSLEY.

My own view is that the purpose of the speech and debate clause has to be assessed in terms of what is a legislative function. The speech and debate clause, I submit, was put into the Constitution to be sure that no Member of the House or Senate could be held liable anywhere for anything that was said on the floor of the House or Senate or in related legislative duties so that we could speak freely in speech, we could debate freely, we could say whatever we chose and if similar language on the outside might constitute the tort of defamation, the tort of slander, we would not be held accountable for that.

But I have great problems, Mr. President, based on the cases which I have just reviewed and on the purpose of the speech and debate clause to say that it gives Members of the Senate immunity for any kind of action such as that which is comprehended within the kind of Federal legislation which has been cited here this evening.

I thank the Chair and yield the floor.

Mr. CHAFEE. Mr. President, I shall vote against the pending amendment offered by the Senator from Oklahoma. Let me detail why.

First, this amendment includes all of Congress, not just the Senate, but the House of Representatives, too. This, for purely practical reasons, will cause severe problems with regard to enactment of this bill we have worked on so long and so diligently. The House will want to have some say in the kind of coverage that will apply to that body. Hence, this provision will bring the bill down, perhaps forever. It probably will kill this bill.

Second, while I am amenable to extending coverage to Congress of employment and civil rights statutes, I worry that this amendment is too hastily put together. As I said, the House certainly will want to have some input in this matter. For example, there are constitutional issues to be researched, I believe it is worth taking the time to carefully craft a comprehensive coverage measure, so that we know, to the best extent possible, what we are doing and the consequences of our actions.

We are in a period of self-flagellation because of the prevailing mood in the country that holds elected officials in low esteem. That mood, nonetheless, does not require that we enact foolish laws that we subsequently shall discover serve the public badly.

Mr. DURENBERGER. Mr. President, I rise in support of the amendment offered by my distinguished colleague from Oklahoma. This amendment tells the American people that we in the Congress are not above the law. We in the Congress will no longer pass laws that impose legitimate burdens on the private sector and then blithely exempt ourselves from those same laws.

Mr. President, you cannot take a step outside of the Beltway and find a single person who accepts the idea that the U.S. Congress is exempted from antidiscrimination laws, or fair labor standards laws, or OSHA laws. How can we justify such exemptions when every day we meet constituents who have extraordinary difficulties in complying with the thousands of mandates the Federal Government imposes on them?

Mr. President, this Senator cannot justify these exemptions, these special perogatives that we preserve for ourselves in this body. The time has come to send a message to the American people—Congress will reform itself and stop acting as if it we are above the law. Otherwise, the American people will send this institution a message—dissolve yourself because we no longer have faith in your ability to govern.

Mr. WOFFORD. Mr. President, I agree completely with the principle that motivates the amendment offered today by the Senator from Oklahoma. If the laws Congress passes are for the good of the Nation, then it should be good for Congress to comply with the laws. I will support the amendment.

I strongly object, however, to the provision which says that if a Senate employee sues for employment discrimination and wins, the taxpayers may foot the bill. When an individual Senator violates our civil rights laws, the money to right that wrong should not come out of the pocket of the American public. If this amendment passes, it is my intention to press the conferees to rewrite the damages provision so it says just that.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I believe what Mark Twain said "patriotism is the last refuge of a scoundrel." I am beginning to believe that interpretations of court decisions by very learned lawyers, of which I have many colleagues who are lawyers, may be the last refuge of Members who prefer the very nice and pleasant lifestyle that we have here in this body, exempting ourselves from a veritable laundry list of legislation which has been passed over the past 40 or 50 years and which place a well justified but sometimes onerous burden on men and women in the free enterprise system in America.

I will not prolong this debate, Mr. President. The hour is late. I rise primarily to make a motion to table the NICKLES amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arizona to lay on the table the amendment of the Senator from Oklahoma.

On this question, the yeas and nays were ordered, and the clerk will call the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] is necessarily absent.

The PRESIDING OFFICER (Mr. BRYAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—61

Akaka	Cochran	Garn
Baucus	Cohen	Glenn
Bentsen	Cranston	Gore
Biden	D'Amato	Gorton
Bingaman	Danforth	Gramm
Bradley	Daschle	Hatch
Breaux	DeConcini	Hatfield
Bryan	Dole	Heflin
Burdick	Domenici	Hollings
Byrd	Exon	Inouye
Chafee	Ford	Jeffords
Johnston	Pell	Sasser
Kennedy	Pryor	Shelby
Lautenberg	Reid	Simon
Levin	Riegle	Stevens
Lugar	Robb	Thurmond
Metzenbaum	Rockefeller	Warner
Mitchell	Roth	Wellstone
Moynihan	Rudman	Wirth
Murkowski	Sanford	
Nunn	Sarbanes	

NAYS—38

Adams	Graham	McConnell
Bond	Grassley	Mikulski
Boren	Harkin	Nickles
Brown	Helms	Packwood
Bumpers	Kassebaum	Pressler
Burns	Kasten	Seymour
Coats	Kerry	Simpson
Conrad	Kohl	Smith
Craig	Leahy	Specter
Dixon	Lieberman	Symms
Dodd	Lott	Wallop
Durenberger	Mack	Wofford
Fowler	McCain	

NOT VOTING—1

Kerrey

So the motion to lay on the table the amendment (No. 1284) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Missouri. Senators will refrain from carrying on conversations on the floor. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, Senator BROWN tells me that, based on the previous vote, his underlying amendment, which is simply a sense-of-the-Senate amendment, would stand or fall with this vote and therefore this will not require a rollcall vote. So I move to table the underlying Brown amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 1283.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1286 TO AMENDMENT NO. 1274

Mr. DANFORTH. Mr. President, I send an amendment to the desk on behalf of Senators KENNEDY, HATCH, DOLE, and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH], for himself, Mr. KENNEDY, Mr. HATCH, and Mr. DOLE, proposes an amendment numbered 1286.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, line 5, insert "(a)" before "section 703".

On page 11, line 5 insert after "or national origin." the following:

"(b) No statements other than the interpretive memorandum appearing at 137 Congressional Record S. 15,276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this act that relates to Wards Cove—Business necessity/cumulative/alternative business practice.".

Mr. DANFORTH. Mr. President, I ask unanimous consent that an agreed-upon statement by Senators DANFORTH, KENNEDY, HATCH, and DOLE relating to the amendment be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATORS DANFORTH, KENNEDY, HATCH, AND DOLE

In offering this amendment, the authors recognize that they do not agree on the meaning of the word "cumulation".

Mr. HATCH. Mr. President, this amendment and the stipulated statement are acceptable to this side.

Mr. KENNEDY. Mr. President, I hope the Senate will accept the amendment.

The PRESIDING OFFICER. If there is no further debate on the amendment—the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, will the Senator from Utah explain this?

Mr. HATCH. I will be happy to.

Mr. President, this amendment is very simple. Is part of the interpretive memorandum that we agreed to in bringing about this effective settlement that will, hopefully, result in a civil rights bill this year. It starts by saying "No statements other than the interpretive memorandum," and then "appearing" at the certain place in the RECORD "shall be considered legislative history." That is basically all it is. It resolves once and for all some of the questions that have arisen during the negotiations leading up to the effectuation of this bill. I think it solves the problem. So we urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If there is no further debate the question is on agreeing to the amendment.

The amendment (No. 1286) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to the substitute?

Mr. KENNEDY. Mr. President, I believe that we have two other items, at least, that we know of. There may be others. I think that we will be able to get that worked out while we are con-

sidering the Grassley amendment, or a matter related thereto. So we will, as I understand, continue to press on. I expect there will be further action on the Grassley amendment, or on an amendment related to the Grassley amendment. I hope, if others have amendments, that they will come and talk with Senator HATCH, myself, or Senator DANFORTH, because I think we are moving very close to final resolution of at least the amendments that have been brought to our attention.

AMENDMENT NO. 1281, AS MODIFIED, TO AMENDMENT NO. 1274

Mr. KENNEDY. Mr. President, this morning, the Senate, by unanimous consent, accepted an amendment requested by the Chairman of the Equal Employment Opportunity Commission, Mr. Evan Kemp, to permit the EEOC and the Attorney General to sue for damages in intentional discrimination cases under title VII and the Americans With Disabilities Act.

Through an oversight, the amendment requested by the EEOC authorized the Attorney General to sue for damages under title VII but not under the ADA.

The EEOC Chairman has requested that we modify the amendment to provide parallel authority to the Attorney General under title VII and the ADA. The Republican leader, Senator DANFORTH, and the Republican manager have cleared the modification.

I ask unanimous consent that amendment No. 1281 be modified to reflect the change I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1281), as modified, is as follows:

On page 7, line 21, insert "the Equal Employment Opportunity Commission, the Attorney General, or" after "subsection (a)(1),".

On page 8, line 2, insert "the Equal Employment Opportunity Commission, or the Attorney General, or" after "subsection (a)(2),".

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, having lost the battle over Clarence Thomas, many Democrats and their operatives have sought to make political hay out of failure. They griped about unfair tactics and smear strategies. They accused Republicans of being unconcerned with the truth. While their target may have been Republicans, the Democrats actually affronted the American people. Tens of millions of us witnessed those hearings with our own eyes. We formed our own opinions mostly without the benefit of mass media filtering or spin control from professional politicos. What pained the Democrats most was this concrete illustration of what everyone else already knew: neither the Democratic Party, not the special interest groups that control them, represent a majority of the American people.

Now these same self-pitying folk are griping about the civil rights bill. News of a compromise had barely broken when the majority leader was on the floor and on television trying to reap partisan advantage. The majority leader claimed the President had agreed to language which was offered a year-and-a-half ago. He said the only reason agreement was not reached earlier was the White House's desire to use race as a political issue. That is grossly untrue, Mr. President, and this Senator, for one, resents the majority leader's distortion of the facts.

The compromise language agreed upon last week does not resemble anything that the Senator from Massachusetts or any other Senator from the other side of the aisle placed before the Senate during the last 2 years. The legislation they offered last year was an extremely radical measure designed to overturn 25 Supreme Court decisions. The Senator from Massachusetts claimed each of three different versions took language directly from the Griggs decision. In no instance, could we locate his language in that decision.

What the White House agreed to last week was a dramatically different much narrower version, than any proposed by any Democrats. For that matter it was narrower than any bill proposed by the Senator from Missouri. In truth, Mr. President, it has been the majority party which has repeatedly moved in the direction of the President. From the outset, they were forced to alert and modify the radical language they had drafted. The reason was simple: the legislation they originally promoted was a quota bill. The fact the Democrats came as far as they did should prove to everyone just how radical their original proposals were.

Mr. President, if the majority leader's revisionism about the bill was not offensive enough, he chose to broaden his attack to include specious matters such as David Duke. During an interview on CNN, the majority leader contended that David Duke's success was directly related to the political tactics used by Republicans in the last few elections. I submit the majority leader has it exactly backward.

David Duke's success is attributable to the heightened racial tensions in our society. This Senator believes it is their approach to government which has invariably exacerbated these tensions. The majority democrats have led the way in dividing this Nation along racial, gender, and ethnic lines. The Democratic party not only has promoted policies which categorizes people on these bases, they have promoted the distribution of entitlements on the basis of group identification and membership. The Democratic Party has used racial and gender quotas to achieve statistical balance among delegates at its conventions. Whether the issue is quotas, comparable worth, or redistributive economic policies, the majority leader's party has been preoccupied with statistical balances—with equality of results instead of equality of opportunity.

Mr. President, this approach to Government violates the constitution guarantees of equal protection of the laws and the Civil Right Act of 1964's protection against discrimination. If is regrettable but true in our country today, you are more likely to get results by designating yourself a member of an aggrieved group, than by arguing your qualifications or merit. It is this approach that has generated and aggravated social tension. The David Dukes of the world are eager to capitalize upon it. Only a steadfast protection of the individual—not quotas or preferential treatment for groups—will diffuse the political tensions upon which the likes of David Duke prey. They are not racial, or gender, or religious tensions—they are tensions of fairness, the melting pot has become a stew of specific proportions.

The language of the Civil Rights Act of 1964 could not be more clear. Subsection 703(a) of the bill states, "it shall be an unlawful employment practice for an employer" either 'to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." It would also be an unlawful employment practice for an employer—

To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Subsections 7803 (b), (c), and (d), used almost identical language to prohibit such discrimination, respectively, in employment agencies, labor organizations, and training and apprenticeship programs. Perhaps the most important provision of the bill, in terms of the current debate, is subsection 703(j) titled, "Preferential treatment not to be granted on account of existing number or percentage imbalance." The language of this subsection was added as a compromise gesture to assuage the concerns of Senators who worried that title VII could force employers to hire by the numbers. It states that "nothing * * * shall be interpreted to re-

quire any employer * * * to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons * * * employed."

The Supreme Court has since periodically argued that the language of the statute was purposely vague in several respects. It has argued that Congress implied that affirmative action, minority set asides, and preferential goals and timetables were legitimate tools to accomplish the statute's objectives, despite operative language which precludes these options. Mr. President, this is indeed an ironic claim. On April 8, 1964, as the Senate's attention turned to title VII of the act, the floor managers of the respective parties during the consideration of title VII, Senators Joseph Clark and Clifford Case, submitted an interpretive memorandum which addressed many of the concerns Senators had expressed about the provision. It stated, in part:

It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited * * * are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title. There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual.

During debate on the bill itself, Senator Hubert Humphrey, majority whip and Democratic floor manager for the legislation, responded to similar criticism by stating, "it is claimed that the bill would require racial quotas for all hiring, when in fact it provides that race shall not be a basis for making personnel decisions." Senator Leverett Saltonstall, the Massachusetts Republican who led his party's task force in drafting the final operative language of the 1964 act, was equally precise about the intent behind the legislation: "The legislation before us today provides no preferential treatment for any group of citizens. In fact, it specifically prohibits such treatment." Mr. President, the RECORD is replete with similar assurances; the few I have mentioned only scratch the surface. These assurances were not trivial. It was the only way the bill was going to pass.

On July 2, 1964, the day the Civil Rights Act became the law of the land, Senator Humphrey inserted into the CONGRESSIONAL RECORD "A concise explanation of the Civil Rights Act of 1964". He inserted the analysis "to provide Americans with a short and understandable explanation of the civil rights bill * * * that the American people may find useful." This analysis was quite precise: "[title VII] does not provide that any preferential treatment shall be given to Negroes or to any other persons or groups. It does not provide that any quota systems may be established to maintain racial balance in employment. In fact, the title prohibits preferential treatment for any particular group."

Mr. President, this Senator cannot imagine how the 88th Congress could have been more explicit in delineating what was—and what was not—permissible behavior by employers in fashioning hiring, promoting and other employment practices. The legislative history of the year-and-a-half battle to pass the 1964 act leaves no doubt as to what Congress intended.

Despite this crystal clear legislative history, the Supreme Court began to turn the 1964 Civil Rights Act on its head with several decisions in the late 1970's: Regents of the University of California versus Bakke, Steelworkers versus Weber, and Fullilove versus Klutznick. By 1986, in the case Johnson versus Board of Transportation for Santa Clara County, Justice Antonin Scalia concluded the Court had finally "complete[d] the process of converting [the 1964 civil rights act] from a guarantee that race or sex will not be the basis for employment determinations, to a guarantee that if often will." At nearly every opportunity during that period—with a few notable exceptions—the Court found justification for obviating the 1964 act's specific prohibitions against discrimination.

Justice John Paul Stevens, although a member of the Court at the time, did not participate in the pivotal 1979 case Steelworkers versus Weber. However, in 1986 while outlining his reasoning in a concurring opinion in Johnson versus Board of Transportation, Justice Stevens described the evolution of title VII case law. "Prior to 1978," he stated, "the Court construed the Civil Rights Act of 1964 as an absolute blanket prohibition against discrimination which neither required nor permitted discriminatory preferences for any group, minority or majority." Justice Stevens believed it was clear Congress had intended "to eliminate all practices which operate to disadvantage the employment opportunities of any group protected by title VII, including caucasians." He concluded that, with respect to the Johnson case, "[i]f the court had adhered to that construction of the [1964] act, petitioners would unquestionably prevail in this case. But it has not done so."

Ultimately, Justice Stevens concurred with the majority in Johnson precisely because the court years before had departed so dramatically from the common understanding of what the 1964 act—and specifically title VII—had meant. In his words, he faced the dilemma of "whether to adhere to an authoritative construction of the act that is at odds with [his] understanding of the actual intent of the authors of the legislation." Because the court in Bakke and Weber had already charted a different course, Justice Stevens acquiesced in the interest of "stability and orderly development of the law."

Mr. President, it is precisely this ratchet effect, as George Will has described it, that so troubles this Senator. Every Supreme Court decision is based upon precedents from previous decisions in the same or related case areas. A series of subsequent cases based upon an important Supreme Court decision is called its progeny. Thus, the progeny of the landmark privacy case Griswold versus Connecticut includes the case of Roe versus Wade. Likewise, the case Griggs versus Duke Power Co. has its own progeny, including: Albemarle Paper Co. versus Moody, Connecticut versus Teal, Watson versus Fort Worth Bank & Trust, and, of course, Wards Cove Packing Co. versus Atonio.

This is a crucial point: While each case of a progeny is based upon a landmark decision or general principle, no two cases are exactly the same. Each case has its own unique circumstances and nuances which invariably sets it apart. Subsequent cases build upon established precedents within a progeny by addressing new issues and topics. Every case becomes a new salient, allowing judicial frontiers and interpretations to be pushed further and further in a particular direction. This is especially true in an era of an activist Supreme Court, when justices have little regard for strict construction or legislative intent.

Mr. President, with that in mind, it is much easier to understand how the Court proceeded to radically alter Congress' understanding of title VII and the 1964 act. There was a time—quite a long time in fact—when there was no doubt as to the purpose and charge of this law. In the seminal case of Griggs versus Duke Power Co., handed down in 1971, the Supreme Court held that, "discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." The Equal Employment Opportunity Commission ruled in 1973 that to countenance reverse discrimination against white individuals would "constitute a derogation of the commission's congressional mandate to eliminate all practices which operate to disadvantage the employment

opportunities of any group protected by title VII, including Caucasians."

In 1976, the Supreme Court held in the case McDonald versus Santa Fe Trail Transportation Co., that "title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they Negroes." As late as 1978, in Furnco Construction Cop. versus Waters, the Court definitively stated, "It is clear beyond cavil that the obligation imposed by title VII is to provide an equal opportunity for each applicant regardless of race, without regard to whether members of the applicant's race are already proportionately represented in the work force."

As previously noted, with the Court's decisions during the late 1970's in Bakke and Weber, it soon became apparent, in Justice Stevens' words, that "a majority of the court interpreted the antidiscriminatory strategy of the [1964 act] in a fundamentally different way." In Bakke, the court ruled that a strict racial quota could not be used in determining admissions to a medical school, but consented to school officials taking into account an individual's race during the admissions process for the purpose of ensuring diversity among the student body.

As Professor Michael Rosenfeld pointed out in an Ohio State University Law Review article, out of Bakke "two distinct positions emerged" on the court:

> The first, expressed by Justice Powell, is based upon the belief that equal protection requires that the same protection be given to every person regardless of race. The second is succinctly expressed by Justice Blackmun's statement that "in order to treat some persons equally, we must treat them differently." The first position emphasizes marginal equality, while the second stresses the importance of achieving global equality, even if that requires endorsing marginal inequality.

Thus, the distinction between "equality of opportunity" and "equality of results" began to blur.

In the 1979 Weber case, the Supreme Court approved a plan reserving for black employees 50 percent of the openings in a factory's craft-training program until the percentage of black craftworkers in a plant matched the percentage of blacks in the local labor force. The majority opinion argued that what mattered was not the letter of the law in title VII but the "spirit" of the 1964 act. Thus, the Court jettisoned previous interpretations of title VII which did not require or permit preferential treatment of individuals or groups on the basis of race. They had suddenly discovered the 1964 act did not preclude "private, voluntary, race-conscious affirmative action efforts" designed to eliminate the vestiges of past intentional discrimination.

In Weber, the Supreme Court overturned two lower court rulings, suggesting the lower courts' "reliance upon a literal construction of the statutory provisions [of the 1964 act] *** [was] misplaced." "[R]ead against the background of the legislative history of title VII and the historical context from which the act arose" the court reasoned that "title VII's prohibition in subsections 703 (a) and (d) against racial discrimination does not condemn all private, voluntary race-conscious affirmative action plans."

Mr. President, the Court arrived at its erroneous conclusion despite the fact that several titles of the 1964 act specifically dealt with eliminating discrimination in the private sector. Title II of the bill expressly targeted discrimination by private businesses in places of public accommodations, such as hotels, restaurants, theaters, and gas stations. Senator Humphrey's "concise explanation" even described title VII as providing that "employers, labor unions, and employment agencies whose activities affect interstate commerce are prohibited from discriminating on the basis of race, color, religion, sex, and national origin." The activist Supreme Court chose to ignore this counsel.

Chief Justice Burger, dissenting in Weber, admitted that "the Court reach[ed] a result I would be inclined to vote for were I a Member of Congress considering a proposed amendment of title VII." However, because the Court's decision effectively amended "the statute to do precisely what both its sponsors and its opponents agreed the statute was not intended to do," he felt that "[I]f 'affirmative action' programs such as the one presented in this case [were] to be permitted, it [was] for Congress, not this Court, to so direct."

The Court continued to expand the instances in which preferential treatment for persons or groups on account of race could be utilized. Also in 1979, the Supreme Court ruled that the Federal Government could take race into account in dispersing Federal grants and programs. In the case Fullilove versus Klutznick, the Court approved a Federal mandate requiring that "at least 10 percent of Federal funds granted for local public works projects must be used by the State or local grantee to procure services or supplies from business owned by minority group members." In contravention of previous court doctrine, this particular allocation was not designed as a remedy for identifiable victims of actual discrimination; rather, this "limited use of racial and ethnic criteria" was intended "to cure the effects of prior [societal] discrimination. * * * even absent any intentional discrimination or other unlawful conduct."

Eloquent dissents were written not by staunch conservatives, but by renown centrists—Justices Potter Stewart and John Paul Stevens. In his dissent, Justice Stewart quoted Justice Louis Brandeis, who said, "Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example." Continuing in this vein, Justice Stewart decried the disturbing transformation taking place in the way our Nation approached issues of discrimination. In words quite ominous, considering contemporary society, he declared:

> [B]y making race a relevant criterion once again in its own affairs the Government implicitly teaches the public that the apportionment of rewards and penalties can legitimately be made according to race—rather than according to merit or ability—and that people can, and perhaps should, view themselves and others in terms of racial characteristics. Notions of "racial discrimination" will be fostered, and private discrimination will necessarily be encouraged.

Justice Stevens also was troubled about the signal sent by the adoption of such a measure by the Federal Government: "* * * a statute of this kind inevitably is perceived by many as resting on an assumption that those who are granted this special preference are less qualified in some respect that is identified purely by their race. Because that perception—especially when fostered by the Congress of the United States—can only exacerbate rather than reduce racial prejudice, it will delay the time when race will become a truly irrelevant, or at least insignificant, factor." Such a sentiment is surely in perfect line with the spirit—and the letter—of the 1964 Civil Rights Act. The setting aside of a specific portion of Federal subsidies to be doled out on the basis of race is decidedly not.

In 1985, the Supreme Court was presented with two cases concerning the remedies available for minority groups victimized by discrimination. In Firefighters versus Cleveland and Sheet Metal Workers versus EEOC the Court ruled that, where minority groups have previously been denied employment opportunities, strict goals and timetables—essentially quotas—could be used to remedy their past treatment. The Court had earlier allowed such means to be used when redressing specific individuals who had been the victims of intentional discrimination. The Court had not previously allowed such measures to be utilized to the benefit of individuals who were not discriminated against, but who were subsequently beneficiaries simply because of their race.

In both cases, the Supreme Court's broadening of the remedies available to minority groups disturbed Justice Byron White. He had been in the majority when the Court ruled in Weber, but he dissented in these cases. The Court's continually shifting standards left him in doubt not only as to what were, and what were not, permissible remedies in cases of discrimination, but also as to how the Court was construing past decisions in this area. His

dissent in Firefighters stressed the growing schism, "The Court purports to find support for its position in Steelworkers versus Weber, but this is not my understanding of that case."

Justice White believed that while "title VII does not bar relief for nonvictims" of intentional discrimination, "the general policy under title VII is to limit relief for racial discrimination in employment practices to actual victims of the discrimination." "Absent findings that those benefiting from the [proposed] relief had been victims of the discriminatory practices," Justice White felt the relief provided in these cases—strict goals, timetables and quotas—was "an impermissible remedy under title VII."

By 1986, the Court had ruled in Johnson versus Board of Transportation that a lesser qualified woman could be promoted over a man in order to further the goal of a more statistically balanced workforce. Justice White became convinced the majority was now grossly distorting the Court's past decisions. The majority in Weber noted that, while there had been no formal finding of intentional discrimination on the part of the employers, "judicial findings of exclusion from crafts on racial grounds are so numerous as to make such exclusion a proper subject for judicial notice." As part of a national collective bargaining agreement before legal action was taken, the employers agreed to "an affirmative action plan designed to eliminate conspicuous racial imbalances in [employers'] then almost exclusively white craftwork forces."

However, the employers in Johnson were not seeking to eliminate gender imbalances created by prior discrimination "because there was no sex discrimination to remedy." The district court had found—and no one contended otherwise—that the employer had "not discriminated in the past, and does not discriminate in the present against women in regard to employment opportunities in general and promotions in particular." As Justice Scalia's dissent eloquently displayed, the goal in this case was simply social engineering:

> Not only was the plan not directed at the results of past sex discrimination by the agency, but its objective was not to achieve the state of affairs that this Court has dubiously assumed would result from an absence of discrimination—an overall work force "more or less representative of the racial and ethnic composition of the population in the community." Rather, the oft-stated goal was to mirror the racial and sexual composition of the entire county labor force, not merely in the agency work force as a whole, but in each and every individual job category at the agency.

Justice Scalia concluded by noting "it is the alternation of social attitudes, rather than the elimination of discrimination, which today's decision approves as justification for state-enforced discrimination. This is an enormous expansion, undertaken without the slightest justification or analysis."

Because the Court had now placed societal discrimination on equal footing with intentional discrimination when it came to fashioning remedies, Justice White believed it necessary to revisit the original decision in Weber. He wrote:

> My understanding of Weber was, and is, that the employer's plan did not violate title VII because it was designed to remedy the intentional and systematic exclusion of blacks by the employer and the unions from certain job categories. That is how I understood the phrase "traditionally segregated jobs" that we used in that case. The Court now interprets it to mean nothing more than a manifest imbalance between one identifiable group and another in an employer's labor force. As so interpreted, that case, as well as today's decision * * * is a perversion of title VII. I would overrule Weber and reverse the judgement below.

Mr. President, the Johnson decision was the culmination of everything the proponents of the Civil Rights Act of 1964 had promised the American people would never come about. We have since witnessed preferential treatment of racial groups and gender groups, in the name of correcting perceived statistical imbalances. We have witnessed strict goals, timetables, and quotas. We have witnessed remedies previously reserved for victims of intentional discrimination now granted to groups who do not even claim to have been discriminated against. We have seen all of these things done in the name of fulfilling the purpose of the Civil Rights Act of 1964—even though each and every one of them blatantly violates provisions set forth in that law.

Mr. President, this Senator believes it is high time we as a Nation return to the notion of civil rights as being the province of individuals, as the Constitution requires, not as a booty for specific groups. One of the cardinal sins our government has committed, as George Will has described, has been the "Balkanization" of the American people. It is perfectly fine for Americans to view themselves as members of groups—be they ethnic, fraternal, neighborhood, civic, regional, et cetera. The Constitution properly recognized the freedom of association and protected the freedom to assemble. James Madison acknowledged in Federalist Paper #10 the inevitability of—and beneficent aspects of—competing factions.

However, for the Government, in the process of drafting laws or distributing proceeds, to differentiate among its people on the basis of race, religion, color, gender or ethnicity, is something radically inconsistent with the principles upon which this Nation was founded and upon which the 1964 Civil Rights Act was passed. As Justice Stewart noted wryly in his dissent in Fullilove versus Klutznick, "there are those who think that we need a new Constitution, and their views may someday prevail. But under the Constitution we have, one practice in which the Government may never engage is the practice of racism—not even 'temporarily' and not even as an 'experiment.'"

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Thank you, Mr. President. I rise to take this opportunity to comment about both the bill and an amendment that should be offered later on this evening.

First, on the legislation, we are about some time today or tomorrow to pass the Civil Rights Act of 1991. This legislation is designed to redress grievances that the American people suffer in the area of discrimination, discrimination on the basis of race, national origin, ethnicity, religion and gender.

This legislation will create a framework that will take us into the 21st century. It is, indeed, very needed because the United States of America needs to show that a 21st century United States of America has no room for bigotry, has no room for bias, and that bigotry and bias is out of date, outmoded and should be outlawed. This is what this legislation will do. I am very proud to be part of it.

I regret that there are certain aspects of the bill that I thought could be done better. I have been particularly concerned about the fact that women will be treated differently in the discrimination section than other groups that have been discriminated against. We are going to place caps on the amount of damages that women can receive if they have been discriminated against or sexually harassed. I regret that. We place no caps on any other group, and I am sorry about that. Yet, I am willing to yield because I think this legislation will be a very important step in the right direction.

But, Mr. President, not only am I concerned about the way women are treated, I am concerned about the fact that Senate employees and House employees are not covered in this legislation. In a very short time, the Senator from Iowa, Mr. GRASSLEY, will be offering an amendment to remedy that. He will be joined by the majority leader of the Senate, Mr. MITCHELL. I salute them for working on a compromise to bring an amendment to the Senate that will include all Senate employees, with no exception, in the civil rights legislation.

I would like to congratulate the Senator from Iowa for taking the leadership in this area. I appreciate very much the majority leader working to provide a framework that both sides of the aisle could agree upon.

I think it is excellent if the Senate will adopt legislation to include us and all of our employees in the Civil Rights Act of 1964 and hopefully in the Civil

Rights Act of 1991; that we will be included in the Age Discrimination Act of 1967, the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990. I say that because I believe the U.S. Senate should practice what we preach. If we preach nondiscrimination to the private sector and to the public sector and the nonprofit sector, we should go by the same rules that we establish for everybody else. I think this amendment will be a very important step to do that.

Why do I advocate that? No. 1, fundamental fairness, that our employees should have the same opportunities they would if they worked for the private sector, to be protected. The other thing, Mr. President, is, as I moved around Maryland this weekend throughout, people say, well, we like you, Senator Mikulski, but we worry a little bit about Congress. We think Congress is isolated. We think the Congress has no idea about what is going on with the American people, what it is like to run a business, what it is like to survive.

People in my State feel they are on the brink of an economic depression. They feel the Members of Congress are isolated, privileged and pampered. Whether it is so or not, that is the perception. But what they also feel very frustrated about is that they feel we never endure the consequences of our actions; that what we do in economic policy or social policy or even in foreign policy, we never have to endure the consequences of our actions.

Therefore, I think when we make ourselves subject to the same legal framework that we do every other American, we are taking an important step forward to restore confidence in this institution, provide fundamental fairness to our employees.

Mr. President, when that amendment, the Grassley-Mitchell amendment, comes up I will be happy and enthusiastic in my support of it.

I yield the floor.

CIVIL RIGHTS PROTECTION FOR FEDERAL EMPLOYEES

Mr. WARNER. Mr. President, I likewise would be a supporter of the compromise, and hope it will soon be brought forward by the distinguished majority leader and Republican leader.

Mr. President, I think at this time I would like to make a statement relating to the amendment the Senator from Virginia has sent to the desk, but it is not the pending business. But I understand from the managers in all likelihood it will be accepted in due course. So at this time, I will make a brief statement in support of my amendment.

Mr. President, the Danforth-Kennedy substitute to the civil rights bill is, in my opinion, a long overdue piece of legislation. I early on was a cosponsor of this measure and welcome the opportunity tonight to give further support.

However, it has come to my attention that there was an omission, and I think it was an honest omission, in the damages section of the compromise legislation. The omission to which I refer is the right of the Federal employee to sue for compensatory damages in cases of discrimination.

Section 1977A of the bill entitled "Damages in Cases of Intentional Discrimination in Employment" provides a remedy under section 706 of the Civil Rights Act of 1964, as provided in section 107(a) of the Americans With Disabilities Act of 1990, section 42 U.S.C. 12117(a), for a plaintiff who has been unlawfully discriminated against by his or her employer. This section on damages allows for the recovery of compensatory damages, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964.

My amendment simply seeks to assure that Federal employees will have the same protections that the underlying legislation provides for other private sector citizens in employment situations.

Mr. KENNEDY. Will the Senator yield?

Mr. WARNER. Yes.

Mr. KENNEDY. The matter is acceptable to me, and I believe to Senator DANFORTH. It is just a matter now of trying to find out from the White House whether this conforms with our earlier understanding. I did not want to cut the Senator off, but I think that if we start off by considering the Grassley amendment, and try to work out the particular language of the Warner amendment with the Justice Department and the White House, we might be able to expedite consideration of the Grassley amendment, the Senator's amendment, and the legislation itself.

Mr. WARNER. Mr. President, I fully intend, if the Senator could give me a minute-and-a-half, to complete my statement, at which time I fully support the efforts by the distinguished Senator from Massachusetts and others to proceed to the Grassley amendment.

Some Senators would view this amendment in the category of a technical correction. But I do not want to leave anything to chance, nor do my fellow colleagues, the Senator from Maryland, Ms. MIKULSKI, Senator STEVENS, Senator WIRTH, and Senator ROTH. As there are presently some 3 million Federal employees, the impact is a very major one.

Mr. President, I wish to acknowledge the vigilance of the American Federation of Government Employees, the AFGE, which brought this matter to my urgent attention. I would like to express my thanks as well to the managers of the bill, Senators KENNEDY and HATCH, and in addition Senator DANFORTH.

I welcome the support of my colleagues, and I ask unanimous consent that my statement at some point could be coupled up in the RECORD at such time as the Senate turns to my amendment. Also, I would like——

Ms. MIKULSKI. Will the Senator yield?

Mr. WARNER. Yes, I yield the floor to my distinguished colleague, the Senator from Maryland.

Ms. MIKULSKI. I want to lend my enthusiastic support to the amendment of the Senator from Virginia.

Mr. President, I am happy to join Senator WARNER in offering this amendment.

This amendment will make it possible for a jury to award compensatory damages to Federal employees who are victims of intentional discrimination or harassment.

It is time to get rid of double standards in Government.

It is time to provide Government employees the same protection that other employees in the private sector have.

If you suffer from sexual harassment, it is just as humiliating whether it is in a Federal agency or a major company.

If you are a victim of racial discrimination, it hurts just as much whether you work at the corporation or at the Government agency.

Mr. President, we have to establish new standards of behavior in our country, from Wall Street to the U.S. Congress.

For too long, Federal employees have had to suffer silently.

This amendment will begin to change that.

I thank the managers for considering this amendment, and I yield the floor.

Mr. WARNER. Mr. President, if I may, at the appropriate time with the support of the managers I will urge adoption of the amendment.

Mr. KENNEDY. At the earliest possible time I will enthusiastically support the Senator's amendment.

Mr. WARNER. I leave nothing to chance. I thank the Senator.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa, Mr. GRASSLEY, is recognized.

AMENDMENT NO. 1287 TO AMENDMENT NO. 1274

(Purpose: To establish the Office of Senate Fair Employment practices in order to protect the right of Senate employees, with respect to Senate employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability, and for other purposes)

Mr. GRASSLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] for himself, Mr. MITCHELL, Mr. SPECTER, Mr. BROWN, Mr. HARKIN, Mr. PACKWOOD, Mr. PRESSLER, and Mr. MCCAIN, proposes an amendment numbered 1287.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, between lines 2 and 3, insert the following:

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

On page 22, line 21, strike "CONGRESS" and insert "HOUSE OF REPRESENTATIVES".

On page 22, strike line 23 and all that follows through page 25, line 22.

On page 25, line 23, strike "(b)" and insert "(a)".

On page 27, line 13, strike "(c)" and insert "(b)".

On page 27, line 25, insert ", except for the employees who are defined as Senate employees, in section 201(c)(1)" after "apply exclusively".

On page 28, following line 23, add the following new title:

TITLE II—GOVERNMENT EMPLOYEE RIGHTS

SEC. 201. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) SHORT TITLE.—This title may be cited as the "Government Employee Rights Act of 1991".

(b) PURPOSE.—The purpose of this title is to provide procedures to protect the right of Senate and other government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) DEFINITIONS.—For purposes of this title:

(1) SENATE EMPLOYEE.—The term "Senate employee" or "employee" means—

(A) any employee whose pay is disbursed by the Secretary of the Senate;

(B) any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;

(C) any applicant for a position that will last 90 days or more and that is to be occupied by an individual described in subparagraph (A) or (B); or

(D) any individual who was formerly an employee described in subparagraph (A) or (B) and whose claim of a violation arises out of the individual's Senate employment.

(2) HEAD OF EMPLOYING OFFICE.—The term "head of employing office" means the individual who has final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the Senate employment of an employee.

(3) VIOLATION.—The term "violation" means a practice that violates section 202 of this title.

SEC. 202. DISCRIMINATORY PRACTICES PROHIBITED.

All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102–104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–14).

SEC. 203. ESTABLISHMENT OF OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES.

(a) IN GENERAL.—There is established, as an office of the Senate, the Office of Senate Fair Employment Practices (referred to in this title as the "Office"), which shall—

(1) administer the processes set forth in sections 205 through 207;

(2) implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader. The appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed. A Director may be reappointed at the termination of any term of service. The President pro tempore, upon the joint recommendation of the Majority Leader in consultation with the Minority Leader, may remove the Director at any time.

(2) SALARY.—The President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader, shall establish the rate of pay for the Director. The salary of the Director may not be reduced during the employment of the Director and shall be increased at the same time and in the same manner as fixed statutory salary rates within the Senate are adjusted as a result of annual comparability increases.

(3) ANNUAL BUDGET.—The Director shall submit an annual budget request for the Office to the Committee on Appropriations.

(4) APPOINTMENT OF DIRECTOR.—The first Director shall be appointed and begin service within 90 days after the date of enactment of this Act, and thereafter the Director shall be appointed and begin service within 30 days after the beginning of the session of the Congress immediately following the termination of a Director's term of service or within 60 days after a vacancy occurs in the position.

(c) STAFF OF THE OFFICE.—

(1) APPOINTMENT.—The Director may appoint and fix the compensation of such additional staff, including hearing officers, as are necessary to carry out the purposes of this title.

(2) DETAILEES.—The Director may, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, use on a reimbursable or nonreimbursable basis the services of any such department or agency, including the services of members or personnel of the General Accounting Office Personnel Appeals Board.

(3) CONSULTANTS.—In carrying out the functions of the Office, the Director may procure the temporary (not to exceed 1 year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) EXPENSES OF THE OFFICE.—In fiscal year 1992, the expenses of the Office shall be paid out of the Contingent Fund of the Senate from the appropriation account Miscellaneous Items. Beginning in fiscal year 1993, and for each fiscal year thereafter, there is authorized to be appropriated for the expenses of the Office such sums as shall be necessary to carry out its functions. In all cases, expenses shall be paid out of the Contingent Fund of the Senate upon vouchers approved by the Director, except that a voucher shall not be required for—

(1) the disbursement of salaries of employees who are paid at an annual rate;

(2) the payment of expenses for telecommunications services provided by the Telecommunications Department, Sergeant at Arms, United States Senate;

(3) the payment of expenses for stationery supplies purchased through the Keeper of the Stationery, United States Senate;

(4) the payment of expenses for postage to the Postmaster, United States Senate; and

(5) the payment of metered charges on copying equipment provided by the Sergeant at Arms, United States Senate.

The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out this title. Expenses of the Office shall include authorized travel for personnel of the Office.

(e) RULES OF THE OFFICE.—The Director shall adopt rules governing the procedures of the Office, including the procedures of hearing boards, which rules shall be submitted to the President pro tempore for publication in the Congressional Record. The rules may be amended in the same manner. The Director may consult with the Chairman of the Administrative Conference of the United States on the adoption of rules.

(f) REPRESENTATION BY THE SENATE LEGAL COUNSEL.—For the purpose of representation by the Senate Legal Counsel, the Office shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978 (2 U.S.C. 288, et seq.).

SEC. 204. SENATE PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The Senate procedure for consideration of alleged violations consists of 4 steps as follows:

(1) Step I, counseling, as set forth in section 205.

(2) Step II, mediation, as set forth in section 206.

(3) Step III, formal complaint and hearing by a hearing board, as set forth in section 207.

(4) Step IV, review of a hearing board decision, as set forth in section 208 or 209.

SEC. 205. STEP I: COUNSELING.

(a) IN GENERAL.—A Senate employee alleging a violation may request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the alleged violation forming the basis of any request for counseling occurred. No request for counseling may be made until 10 days after the first Director begins service pursuant to section 203(b)(4).

(b) PERIOD OF COUNSELING.—The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

(c) EMPLOYEES OF THE ARCHITECT OF THE CAPITOL AND CAPITOL POLICE.—In the case of an employee of the Architect of the Capitol or an employee who is a member of the Capitol Police, the Director may refer the employee to the Architect of the Capitol or the Capitol Police Board for resolution of the employee's complaint through the internal grievance procedures of the Architect of the Capitol or the Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.

SEC. 206. STEP II: MEDIATION.

(a) IN GENERAL.—Not later than 15 days after the end of the counseling period, the

employee may file a request for mediation with the Office. Mediation may include the Office, the employee, and the employing office in a process involving meetings with the parties separately or jointly for the purpose of resolving the dispute between the employee and the employing office.

(b) MEDIATION PERIOD.—The mediation period shall be 30 days beginning on the date the request for mediation is received and may be extended for an additional 30 days at the discretion of the Office. The Office shall notify the employee and the head of the employing office when the mediation period has ended.

SEC. 207. STEP III: FORMAL COMPLAINT AND HEARING.

(a) FORMAL COMPLAINT AND REQUEST FOR HEARING.—Not later than 30 days after receipt by the employee of notice from the Office of the end of the mediation period, the Senate employee may file a formal complaint with the Office. No complaint may be filed unless the employee has made a timely request for counseling and has completed the procedures set forth in sections 205 and 206.

(b) HEARING BOARD.—A board of 3 independent hearing officers (referred to in this title as "hearing board"), who are not Senators or officers or employees of the Senate, chosen by the Director (one of whom shall be designated by the Director as the presiding hearing officer) shall be assigned to consider each complaint filed under this section. The Director shall appoint hearing officers after considering any candidates who are recommended to the Director by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters. A hearing board shall act by majority vote.

(c) DISMISSAL OF FRIVOLOUS CLAIMS.—Prior to a hearing under subsection (d), a hearing board may dismiss any claim that it finds to be frivolous.

(d) HEARING.—A hearing shall be conducted—

(1) in closed session on the record by a hearing board;

(2) no later than 30 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 60 days the time for conducting a hearing; and

(3) except as specifically provided in this title and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code.

(e) DISCOVERY.—Reasonable prehearing discovery may be permitted at the discretion of the hearing board.

(f) SUBPOENA.—

(1) AUTHORIZATION.—A hearing board may authorize subpoenas, which shall be issued by the presiding hearing officer on behalf of the hearing board, for the attendance of witnesses at proceedings of the hearing board and for the production of correspondence, books, papers, documents, and other records.

(2) OBJECTIONS.—If a witness refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with the proceedings of a hearing board, the hearing board shall rule on the objection. At the request of the witness, the employee, or employing office, or on its own initiative, the hearing board may refer the objection to the Select Committee on Ethics for a ruling.

(3) ENFORCEMENT.—The Select Committee on Ethics may make to the Senate any recommendations by report or resolution, including recommendations for criminal or civil enforcement by or on behalf of the Office, which the Select Committee on Ethics may consider appropriate with respect to—

(A) the failure or refusal of any person to appear in proceedings under this or to produce records in obedience to a subpoena or order of the hearing board; or

(B) the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under this section.

For purposes of section 1365 of title 28, United States Code, the Office shall be deemed to be a committee of the Senate.

(g) DECISION.—The hearing board shall issue a written decision as expeditiously as possible, but in no case more than 45 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the employee and the employing office. The decision shall state the issues raised by the complaint, describe the evidence in the record, and contain a determination as to whether a violation has occurred.

(h) REMEDIES.—If the hearing board determines that a violation has occurred, it shall order such remedies as would be appropriate if awarded under section 706(g) and (k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(g) and (k)), and may also order the award of such compensatory damages as would be appropriate if awarded under section 1977 and section 1977A(a) and (b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981A(a) and (b)(2)). In the case of a determination that a violation based on age has occurred, the hearing board shall order such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)). Any order requiring the payment of money must be approved by a Senate resolution reported by the Committee on Rules and Administration. The hearing board shall have no authority to award punitive damages.

(i) PRECEDENT AND INTERPRETATIONS.—Hearing boards shall be guided by judicial decisions under statutes referred to in section 202 and subsection (h) of this section, as well as the precedents developed by the Select Committee on Ethics under section 208, and other Senate precedents.

SEC. 208. REVIEW BY THE SELECT COMMITTEE ON ETHICS.

(a) IN GENERAL.—An employee or the head of an employing office may request that the Select Committee on Ethics (referred to in this section as the "Committee"), or such other entity as the Senate may designate, review a decision under section 207, including any decision following a remand under subsection (c), by filing a request for review with the Office not later than 10 days after the receipt of the decision of a hearing board. The Office, at the discretion of the Director, on its own initiative and for good cause, may file a request for review by the Committee of a decision of a hearing board not later than 5 days after the time for the employee or employing office to file a request for review has expired. The Office shall transmit a copy of any request for review to the Committee and notify the interested parties of the filing of the request for review.

(b) REVIEW.—Review under this section shall be based on the record of the hearing board. The Committee shall adopt and publish in the Congressional Record procedures for requests for review under this section.

(c) REMAND.—Within the time for a decision under subsection (d), the Committee may remand a decision no more than 1 time to the hearing board for the purpose of supplementing the record or for further consideration.

(d) FINAL DECISION.—

(1) HEARING BOARD.—If no timely request for review is filed under subsection (a), the Office shall enter as a final decision, the decision of the hearing board.

(2) SELECT COMMITTEE ON ETHICS.—

(A) If the Committee does not remand under subsection (c), it shall transmit a written final decision to the Office for entry in the records of the Office. The Committee shall transmit the decision not later than 60 calendar days during which the Senate is in session after the filing of a request for review under subsection (a). The Committee may extend for 15 calendar days during which the Senate is in session the period for transmission to the Office of a final decision.

(B) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, unless a majority of the Committee votes to reverse or remand the decision of the hearing board within the time for transmission to the Office of a final decision.

(C) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, if the Committee, in its discretion, decides not to review, pursuant to a request for review under subsection (a), a decision of the hearing board, and notifies the interested parties of such decision.

(3) ENTRY OF A FINAL DECISION.—The entry of a final decision in the records of the Office shall constitute a final decision for purposes of judicial review under section 209.

(e) STATEMENT OF REASONS.—Any decision of the Committee under subsection (c) or subsection (d)(2)(A) shall contain a written statement of the reasons for the Committee's decision.

SEC. 209. JUDICIAL REVIEW.

(a) IN GENERAL.—Any Senate employee aggrieved by a final decision under section 208(d) may petition for review by the United States Court of Appeals for the Federal Circuit.

(b) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that—

(1) with respect to section 2344 of title 28, United States Code, service of the petition shall be on the Senate Legal Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, United States Code, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 208(d);

(4) the Office shall be an "agency" as that term is used in chapter 158 of title 28, United States Code; and

(5) the Office shall be the respondent in any proceeding under this section.

(c) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record, or those

parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. The record on review shall include the record before the hearing board, the decision of the hearing board, and the decision, if any, of the Select Committee on Ethics.

(d) ATTORNEY'S FEES.—If an employee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

SEC. 210. RESOLUTION OF COMPLAINT.

If, after a formal complaint is filed under section 207, the employee and the head of the employing office resolve the issues involved, the employee may dismiss the complaint or the parties may enter into a written agreement, subject to the approval of the Director.

SEC. 211. COSTS OF ATTENDING HEARINGS.

Subject to the approval of the Director, an employee with respect to whom a hearing is held under this title may be reimbursed for actual and reasonable costs of attending proceedings under sections 207 and 208, consistent with Senate travel regulations. Senate Resolution 259, agreed to August 5, 1987 (100th Congress, 1st Session), shall apply to witnesses appearing in proceedings before a hearing board.

SEC. 212. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any employee by any Member, officer, or employee of the Senate, or by the Architect of the Capitol, or anyone employed by the Architect of the Capitol, as the case may be, because of the exercise of a right under this title constitutes an unlawful employment practice, which may be remedied in the same manner under this title as is a violation.

SEC. 213. CONFIDENTIALITY.

(a) COUNSELING.—All counseling shall be strictly confidential except that the Office and the employee may agree to notify the head of the employing office of the allegations.

(b) MEDIATION.—All mediation shall be strictly confidential.

(c) HEARINGS.—Except as provided in subsection (d), the hearings, deliberations, and decisions of the hearing board and the Select Committee on Ethics shall be confidential.

(d) FINAL DECISION OF SELECT COMMITTEE ON ETHICS.—The final decision of the Select Committee on Ethics under section 208 shall be made public if the decision is in favor of the complaining Senate employee or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee on Ethics may decide to release any other decision at its discretion. In the absence of a proceeding under section 208, a decision of the hearing board that is favorable to the employee shall be made public.

(e) RELEASE OF RECORDS FOR JUDICIAL REVIEW.—The records and decisions of hearing boards, and the decisions of the Select Committee on Ethics, may be made public if required for the purpose of judicial review under section 209.

SEC. 214. EXERCISE OF RULEMAKING POWER.

The provisions of this title, except for sections 209, 220, 221, and 222, are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. Notwithstanding any other provision of law, except as provided in section 209, enforcement and adjudication with respect to the discriminatory practices prohibited by section 202, and arising out of Senate employment, shall be within the exclusive jurisdiction of the United States Senate.

SEC. 215. TECHNICAL AND CONFORMING AMENDMENTS.

Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) through (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (2) and (3), respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking "(2) and (6)(A)" and inserting "(2)(A)", as redesignated by subparagraph (B) of this paragraph; and

(ii) by striking "(3), (4), (5), (6)(B), and (6)(C)" and inserting "(2); and

(2) in subsection (c)(2), by inserting ", except for the employees who are defined as Senate employees, in section 201(c)(1) of the Civil Rights Act of 1991)" after "shall apply exclusively".

SEC. 216. POLITICAL AFFILIATION AND PLACE OF RESIDENCE.

(a) IN GENERAL.—It shall not be a violation with respect to an employee described in subsection (b) to consider the—

(1) party affiliation;

(2) domicile; or

(3) political compatibility with the employing office,

of such an employee with respect to employment decisions.

(b) DEFINITION.—For purposes of this section, the term "employee" means—

(1) an employee on the staff of the Senate leadership;

(2) an employee on the staff of a committee or subcommittee;

(3) an employee on the staff of a Member of the Senate;

(4) an officer or employee of the Senate elected by the Senate or appointed by a Member, other than those described in paragraphs (1) through (3); or

(5) an applicant for a position that is to be occupied by an individual described in paragraphs (1) through (4).

SEC. 217. OTHER REVIEW.

No Senate employee may commence a judicial proceeding to redress discriminatory practices prohibited under section 202 of this title, except as provided in this title.

SEC. 218. OTHER INSTRUMENTALITIES OF THE CONGRESS.

It is the sense of the Senate that legislation should be enacted to provide the same or comparable rights and remedies as are provided under this title to employees of instrumentalities of the Congress not provided with such rights and remedies.

SEC. 219. RULE XLII OF THE STANDING RULES OF THE SENATE.

(a) REAFFIRMATION.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(b) AUTHORITY TO DISCIPLINE.—Notwithstanding any provision of this title, including any provision authorizing orders for remedies to Senate employees to redress employment discrimination, the Select Committee on Ethics shall retain full power, in accordance with its authority under Senate Resolution 338, 88th Congress, as amended, with respect to disciplinary action against a Member, officer, or employee of the Senate for a violation of Rule XLII.

SEC. 220. COVERAGE OF PRESIDENTIAL APPOINTEES.

(a) IN GENERAL.—

(1) APPLICATION.—The rights, protections, and remedies provided pursuant to section 202 and 207(h) of this title shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any Presidential appointee may file a complaint alleging a violation with the Equal Employment Opportunity Commission, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(ii) not made consistent with required procedures; or

(iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) ATTORNEY'S FEES.—If the presidential appointee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(b) PRESIDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 202 but does not include any individual—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or

(3) who is a member of the uniformed services.

SEC. 221. COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES.

(a) APPLICATION.—The rights, protections, and remedies provided pursuant to sections 202 and 207(h) of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any individual referred to in subsection (a) may file a complaint alleging a violation with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(c) JUDICIAL REVIEW.—Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(d) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) ATTORNEY'S FEES.—If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

SEC. 222. SEVERABILITY.

Notwithstanding section 301 of this Act, if any provision of section 209 or 220(a)(3) is invalidated, both sections 209 and 220(a)(3) shall have no force and effect.

On page 29, before line 1, insert the following:

TITLE III—GENERAL PROVISIONS

On page 29, line 1, strike "21" and insert "301".

On page 29, line 8, strike "22" and insert "302".

Mr. GRASSLEY. Mr. President, I am very pleased to propose this amendment extending the employment discrimination laws to employees of the Senate. This is an amendment that I have worked out with the majority leader. I want to take this opportunity, Mr. President, to thank him for his interest in this issue, for his cooperation, and for the time that he has spent working with me on this amendment to work it out.

For the first time, as a result of this amendment, if it is adopted, and I hope it will be adopted, all Senate employees will have the right to judicial review of employment decisions. This is a historic development and one whose time has finally come.

I would like to explain the amendment. First, it establishes a Senate office of fair employment practice. That office will have jurisdiction over complaints of employment discrimination for all Senate employees.

An employee will be entitled to file a claim with the fair employment office. The office will attempt to settle the claim on an informal basis using mediation. If that is unsuccessful, the employee can request an administrative hearing.

The hearing will be on the record, with an opportunity for cross-examination. A panel of three independent hearing officers will hear and weigh the evidence. Their decision would be issued on the record. They will have the right to subpoena witnesses and evidence. They could award all of the remedies that are available under title VII, including compensatory damages.

The decision of the panel may then be subject to review by the Ethics Committee, who will have the power to reverse or remand the decision of the panel.

Mr. President, this is a little bit different than the way the Ethics Committee normally would act because this legislation that the majority leader and I are proposing would say that a majority of the panel will be necessary for reversal or remand, ensuring that such decisions will not be made on a purely partisan basis. Ethics Committee review is not mandatory, but it is at the discretion of either party or the director of the fair employment office.

If the employee needs an opportunity—feeling that justice has not been done at this hearing process level that I have just described—there is an appeal to the U.S. Court of Appeals for the Federal circuit. The court will review all the proceedings, including any decisions that the Ethics Committee might make.

This process will be available to all employees from legislative staff to the restaurant and mail room workers.

Mr. President, there are no exemptions. There are no gaps. There are no loopholes. If you are a Senate employee, you are covered with the protections of these civil rights bills now on the books.

And we will ensure that the same coverage extends to political hires in the executive branch. This compromise of course is not perfect. I have said that coverage of the Senate should be on the same terms as for the private sector. But, Mr. President, sometimes to get legislation passed and to move forward, it is necessary to compromise.

In this institution, compromise is a way to get something done. So that is what we have here—a good and valuable piece of legislation, based upon bringing all interests together; full coverage for all employees, with a day in court at the Federal appeals court level.

That is a lot more than many of my colleagues would like; you have heard from them already this evening on other pieces of legislation, and you will hear from them also on this legislation.

I have heard a lot of Senators complaining about how difficult it would be for them to live by civil rights laws. They tell me that they want to hire and fire whoever they wish, for whatever reason they deem relevant to their employment decisions. I can only say, in response, that if these Senators find the imposition of these laws too onerous to live by, I hope that they can adjust, because the people of this country feel that these laws should be equally applied, or as close to equal application as possible.

Some will argue that key legislative employees should not be entitled to any court review. They will cite the Constitution's speech and debate clause as a source of immunity from employment laws. But the speech and debate clause is not implicated by a law that is as simple as prohibiting Senators from discriminating against their employees, and I think that is sound constitutional law, based upon decisions that I have had occasion to look at.

It is not constitutionally protected speech or debate when a Senate office hires or fires on the basis of race, or sex, or fails to put a stop to sexual harassment. Moreover, the language of the compromise codifies existing law and recognizes that a Senator may consider an employee's party affiliation, State of residence, or political compatibility when making employment decisions. Any argument that this language infringes on a Senator's speech and debate immunity is baseless.

Frankly, Mr. President, this is a giant step forward in getting Senators to live by similar rules that we expect other people in the country to live by, a first step back to the vision of the founders that the very legitimacy of legislative rule in our democracy would be contingent upon congres-

sional rulers following the very rules we apply to all of society.

I have been working on this issue for several years, and I think the public has always supported initiatives of this sort. After recent events, as more attention has been placed on this issue by the press, the public is even demanding more prompt action on our part.

It is entirely appropriate, Mr. President, that we respond to this mandate. The people have been scrutinizing us quite closely in recent days. Many have questioned the legitimacy of our judgment over other men, and the legitimacy of rules that we pass for others but not for ourselves.

The President has warned us that we are improperly treating ourselves as a "privileged class of rulers." I happen to agree with him. I know a lot of my colleagues do not agree with him, and I respect their judgment. But we do have a national voice, the only national voice, in our political way of doing business in this country that I think speaks the opinion of people at the grassroots. For now, only we in this body have the power to change that perception.

So I urge my colleagues to begin to restore the legitimacy of this body in the minds of the people by eliminating the Senate's exemption from civil rights and other related laws. This compromise amendment is a first step in that direction.

I thank Senator MITCHELL for his help in this effort.

Mr. MITCHELL. Mr. President, I thank my colleague for his comments, and I thank him for his efforts in this regard.

Mr. President, I rise in support of the amendment offered by Senator GRASSLEY and myself, the purpose of which is to cover the staff of the U.S. Senate, the Executive Office of the President, and other Presidential appointees under our Nation's antidiscrimination laws.

The amendment would apply to the Senate and the Executive Office of the President, the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and the underlying bill itself, the Civil Rights Act of 1991.

Under this amendment, each staff person, without exception or exclusion, would have recourse to the court of appeals for the Federal circuit for a full and substantive review of the record in his or her case to determine if the law and evidence in the case were properly applied. No staff person would be exempted from that basic right of appeal to the courts.

The core purpose of this amendment is one that ought to have the support of every Member of this body: To give the people who work here in the Senate, the people who work at the White House, and the Schedule C appointees scattered throughout the executive branch, a reasonable and fair and open process to hear and adjudicate complaints of discrimination, a process similar to that available to their counterparts in the civil service, and to do that in a manner consistent with the constitutional separation of powers.

To understand where we are today, it is helpful to know where we have been. Under current law, and under the pending Civil Rights Act of 1991, private persons who are employers are liable to charges of discrimination. Those charges must first be brought to the Office of Equal Employment Opportunity.

When, and only when, the efforts of that office at mediation and conciliation have failed, the aggrieved employee may file suit in Federal district court and require that a neutral body—the Federal judiciary—hear the facts of the case, draw conclusion from those facts, and issue a ruling based on the requirements of the law.

Employers then have a right to challenge the lower court's initial decision by seeking to have a Federal appellate court review the trial record and determine if the evidence substantiates the charges brought and the decision reached. Employees, of course, have the same right.

It has long been Senator GRASSLEY'S goal that the protections in law which the Congress provides to employees in the private sector should be available to employees of the Senate. I agree.

I further agree—as does Senator GRASSLEY—that similar protection should apply for the persons employed in the Executive Office of the White House—that is, White House staff, Trade Representative staff, Office of Management and Budget staff, and the political appointees who do not require the advice and consent of the Senate to take up noncompetitive posts in the executive branch.

Mr. President, it is obvious that Government is not identical to the private sector. Punitive damages are levied against the private sector as a deterrent to others and to future misconduct. They are not generally applied against the Federal Government because the funds involved are tax dollars, and the deterrent element is not the same.

Many of the frequent analogies drawn between the public and private sector are valid, as far as they go, but it is essential to understand where they stop being valid and useful.

For instance, the President has always been able to raise a defense of Executive privilege against the disclosure of confidential information or advice received from his staff.

Similarly, article I, section 6 of the Constitution provides that elected Members of the Congress may not be questioned "in any other place" about their legislative activities.

As a result, because of Executive privilege in the case of the President and the "speech and debate" clause of the Constitution in the case of Congress, both institutions—the President and the individual Members of Congress—have been exempted from the reach of certain laws.

No one in this institution has proposed to change that. Everyone here has agreed, at least by acquiescence, that the President ought to retain the right of Executive privilege, and the Members of the Senate ought to retain the right under the speech and debate clause of not being questioned in any other place.

In the case of the Congress, those exemptions have been based on the separation of powers doctrine which holds that each individual branch of our Government system may not exert police power over the other branches. It is an essential element of the balance of powers which preserves the liberties of American citizens.

The Federal judiciary, for instance, is insulated from political interference, once each judge or justice has been sworn in, by lifetime tenure and a salary that cannot be reduced. Thus, we ensure that the cases we bring to the Federal courts will be heard in an atmosphere free of partisan maneuvering.

Likewise, the Congress is free of the enforcement powers of the executive branch against its internal operations and should be free. That ensures the independence of the legislative process as well as preserving the accountability each individual Member has to the constituents who elected him or her.

Members of the Senate cannot go back to their States and plead that the executive branch forced them to do one thing rather than another: They are required to be accountable for their own votes directly to the persons who elected them. That is as it should be

Neither Congress nor the President seeks to direct the chief executive officers of American businesses in the personnel decisions they may make. We ask only that they be accountable to the law.

The purpose of this amendment is to apply the same standard—accountability to the law—to ourselves and to the Office of the President. Not more, but not less.

The amendment achieves this outcome by respecting the constitutional issues which arise whenever either Presidential or congressional powers are at stake.

It establishes an internal mechanism analogous to the Equal Employment Opportunity Commission, which private parties have available to them. It establishes that analogous mechanism within the Senate with respect to the antidiscrimination laws.

A provision of the amendment makes the Office of the President subject directly to EEOC, since no separation of

powers issue prevents that, or to another entity that the President may, at his discretion, establish to perform a similar function.

In the Senate, the entity would be an Office of Senate Fair Employment Practices that would be created under this amendment. The Director would be appointed by the President pro tempore of the Senate, upon the recommendation of the majority leader in consultation with the minority leader.

The Director would have to submit his or her budget to the Appropriations Committee, in much the same manner as the Office of Senate Legal Counsel and legislative counsel must now do.

The Director would be specifically mandated to draw up and promulgate regulations regarding the operations of that office without oversight from any Senate committee or other Senate body.

That ensures the office and Director of independence.

The Director's function would then be analogous to the function now served by the EEOC in the executive branch. The Director would, at the request of any staff person, first initiate a counseling process, to last no more than 30 days, to seek resolution of an interoffice problem or dispute.

In the event counseling fails, the Director would, on request of staff, be able to conduct a mediation process involving the hiring authority—including individual Members of the Senate—the aggrieved staff person, and outside mediators when appropriate.

If mediation failed, the staff person would, 15 days after the expiration of the mediation period, have the right to file a formal complaint with the Director and ask for a hearing of the facts.

The hearing process would not be in the hands of the Director directly. Instead, the Director would appoint outside mediators, independent hearing examiners, to ascertain the facts of the case and to reach a decision based on those facts.

Hearing examiners would not form a permanent body of personnel. They would be engaged for each individual case as a panel and dismissed when that case was concluded.

The goal of this provision is to create as close an analogy to the fact-finding function of a court as possible within the constitutional limits of the "speech and debate" clause.

This is an effort to reconcile two conflicting provisions, two conflicting objectives, to provide protections to the members of the Senate staff identical to those accorded other persons, but to do it in a way that is within the Constitution.

The procedure envisaged would include reasonable prehearing discovery and depositions at the board's discretion. The procedure would then permit either party to request a review of the decision by the Ethics Committee.

The Ethics Committee would be required to have a majority vote in order to reverse a hearing board decision or remand it back to the hearing board for further deliberations. In the case of an Ethics Committee deadlock—that is, if it were three to three in the Ethics Committee—the ruling of the hearing board would stand.

The counseling, mediation, and conciliation processes in the proposal remain confidential until a final decision—following Ethics Committee review—of the hearing board is formally entered.

An important safeguard in this amendment—the one factor that ensures the application of the antidiscrimination laws to the Senate will be serious—is that nothing, neither a hearing board's contrary decision nor an Ethics Committee reversal hampers the ability of a staff member to take the matter to court.

Under this amendment, there are no exempted staff members who cannot seek the protection of judicial review. There are no loopholes through which bodies of staff or groups of staff can be created who would be unprotected by the laws. All staff would be protected by this law. All staff would have the right of judicial review.

Because of the "speech and debate" clause prohibition which limits the reach of the Judiciary into the operations of a Senator's own office or committee, the independent hearing board is the trier of fact rather than a Federal district court.

But a review of that board's decision in any case may go to the court of appeals for the Federal circuit where the standard of proof is, in all essential elements, the same standard as is applied against executive branch agencies under the Administrative Procedures Act.

Additionally, unlike the underlying law that will apply to the private sector, compensatory damages against the Senate will not be capped for any employee. Compensatory damages will be available for all classes of discrimination, with the guideline—but not a requirement—that the underlying law be consulted in terms of appropriate relief in each instance. However, no language in this amendment prohibits the award of compensatory damages in excess of what will be available in the private sector to nonracial discrimination cases.

Additionally, when a hearing board decision is final and goes against a Senate Member, that result will be made public. Should the Ethics Committee reverse a hearing board decision favorable to an employee, that reversal and the underlying decision will be made public. As a result, even in cases where neither party seeks to appeal to the Federal judiciary, Members will in all instances confront the fact that their conduct under the antidiscrimination laws will be a matter of public record.

Similarly, because damage awards required to be paid must be subject to a Senate resolution, the amount of those awards will be public knowledge, as will be the identity of the office whose conduct caused the award to be granted in the first place. And, of course, any dispute that goes to a Federal court would also become public upon filing.

The point of this process is to adapt, as closely as possible, the process of litigation in the private sector to the different motivations and risks that apply in a public, electoral office such as the Senate and the Executive Office of the President.

In private litigation, unsubstantiated cases may be brought by a desire on the part of the plaintiff to reap a cash reward in the form of an out-of-court settlement or a damage award granted by a jury.

The costs of this, to the private sector, are to erode the profits of a business or even, in extreme cases, to threaten the continued existence of the business.

In the public sector, no precisely similar risks are at stake. Neither the President personally or any Member of the Senate is liable for damage awards out of his or her own pocket. Indeed, no private CEO is required to undertake personal bankruptcy to satisfy an award. Awards come from corporate profits, not the personal assets of company officials.

However, in the public electoral sector, there is an asset which is easily damaged and hard to repair, and that is an individual Member's reputation.

Each Member of the Senate runs for public office on the implicit claim of his or her personal integrity. Each candidate for office knows his or her motives may be questioned by a political opponent. But that is part of the process which the public understands.

Political claims and allegations are usually given the weight they deserve by the public: They are regarded as unproven and the burden of proof is on the party making the allegation.

Under those circumstances, candidates for office who are incumbents, can and most often effectively do defuse the worst kinds of politically motivated attacks on their integrity. Members who are candidates are thus enabled to focus the election contest on the issues facing a State, their constituents, the Nation at large or whatever else they choose.

A very different element enters the picture, however, if a political opponent can credibly undermine a candidate's claim of integrity. That, in poliical terms, is the only capital each member brings to a electoral contest.

We all know we can be outspent by a wealthy or well-financed opponent.

We all know we can be victims or beneficiaries of foreign or domestic

policy developments over which we have no personal control.

But an important element in making a credible case for reelection is personal integrity.

Once that is undermined, or credibly tarnished, each candidate who is also a Member, is fighting an uphill battle for which there is really no counterpart in the private sector.

Private firms may be required to disclose elements of new product development or other corporate secrets they had hoped to keep private; individual corporate officers may be temporarily embarrassed; but in very few cases would an antidiscrimination suit, or the threat of one, cause a CEO or other corporate officer to lose his position directly.

The same is not true for elected officials such as Members of the Senate. If a credible and politically well timed charge can be levied against a Member that he or she intentionally discriminated on the basis of race or sex or disability or some other cause, that Member is at direct risk of forfeiting his or her seat without the benefit of due process.

A certain amount of rough and tumble is part of political life, as we all know. The goal of this amendment is not to add to that rough and tumble, not to provide targets of opportunity for ingenious opponents, but to give all Senate employees the same substantive protection against discrimination as is given to all other workers.

Because of the special circumstances that surround the Senate, the process cannot be mechanically identical in each and every respect. But there is no call for mechanical identity so long as the substantive issues are fairly addressed.

This, I believe, the amendment before us achieves, and as a result, it deserves the support of every Member of the Senate.

I would just like to make some concluding comment.

Mr. President, this is a very difficult subject for every Member of the Senate. Reasonable people, people whose views I greatly respect, disagree on this amendment. Among them is the Senator from New Hampshire. There is not a Senator that I respect more than the distinguished senior Senator from New Hampshire. I know he disagrees with this. I know he believes this is not constitutional.

I am unable to say with certainty whether this is or is not constitutional. I believe it can be held constitutional. It is an effort to do what I suggested earlier is difficult to do, and that is to provide the protections in law, the protections in law for members of Senate staff now afforded to other persons within the constraints of the separation of powers mandated under the Constitution.

It is very clear to me—and I express this as just a personal view which I know others will disagree with—it is very clear to me that the method attempted to achieve that result in the prior amendment was clearly unconstitutional. No effort was made there to accommodate the separation of powers requirements under the Constitution. This is such an effort.

Senator GRASSLEY and I did not agree on every issue. This is a compromise. There are some things in here that he would have preferred not be in here. The same is true of myself.

There are other things not in here that he would have liked in here. The same is true of myself. This is a compromise in a sincere effort to bring about what I know all Senators want, and that is to accord to Senate employees the protection of the laws against discrimination in a manner that is compatible with the Constitution. I cannot say to Senators that this is the perfect solution, this is the only solution. I can say that this is an attempt to achieve a responsible and thoughtful solution that is a product of many days of effort, of compromise, of give and take on both sides.

I hope that Senators will support this. I recognize the difficulty of the subject matter, and we all ought to recognize that we are imposing upon ourselves as Senators a very substantial burden, a burden which the Senator from New Hampshire is shortly going to spell out in some considerable detail. But I believe this is a responsible effort and a reasonable middle ground at trying to accommodate the two objectives which I have described.

Mr. President, I wonder if my colleagues would be agreeable to a time limitation on debate, and a vote at a certain time on this, so that we can complete action on the measure. We both, the Senator from Iowa and I, have spoken, and I do not want to disadvantage the opponents, the Senator from New Hampshire, and others. I do not know whether the other Senators age going to speak for or against the amendment.

Might I suggest, as a way of a least getting a reaction, that we consider 1 additional hour on the subject, perhaps with 40 minutes of that time going to the opposition, and 20 minutes to the proponents, since Senator GRASSLEY and I have already used up some time in support?

(Mr. LAUTENBERG assumed the chair.)

Mr. RUDMAN. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. RUDMAN. I do not have a problem with that. But at the conclusion of that time, which I believe would be 60 minutes, I would propose to make a procedural motion.

If that prevailed, that would be the end of it. If it did not, and I expect it probably would not, I would like to reserve the right for an additional 10 minutes.

Mr. MITCHELL. That is fine.

Mr. WARNER. Could the Senator from Virginia, as a proponent and cosponsor, have 3 minutes?

Mr. MITCHELL. That will be fine with me.

Mr. SPECTER. I would, on the constitutional issue, which is somewhat involved, ask for 10 minutes, and depending on what my colleague from New Hampshire does, could I have an equal 10 minutes to reply in a discussion with him at that stage?

Mr. RUDMAN. I may not need to reply. But I appreciate the courtesy.

Mr. JEFFORDS. As a proponent of the amendment, I would like 5 minutes, if I may.

Mr. SEYMOUR. I would like 5 minutes as a proponent.

Mr. MITCHELL. Right now, there are 23 minutes of the proponents' time, not counting an additional 10 minutes on either side.

I want to be sure the Senator from New Hampshire has a fair amount of time equal to the aggregate of all the proponents if he wants to use it. I would suggest, then, that we agree on, if we could, 70 minutes, with 40 minutes to the Senator from New Hampshire and 30 minutes to the proponents. Would that be agreeable?

Mr. SPECTER. Mr. President, is it clear that this Senator has 10 minutes——

Mr. MITCHELL. I am going to include that in the request.

Mr. SPECTER. In the main body, and then 10 minutes to reply to the Senator from New Hampshire if he exercises that afterward.

Mr. MITCHELL. I am not going to get beyond the first vote. There will be no limitation after that. I would like to get to his procedural point, and after that there would be no limitation. I was going to use the times the Senators suggested.

Would the Senator from Oklahoma like time?

Mr. NICKLES. Reserving the right to object, this Senator is interested in possibly amending the so-called Mitchell-Grassley amendment. I might ask the majority leader if I am correct—and maybe I have not seen the last draft—but am I correct in my assumption that under the Mitchell-Grassley compromise, there is not a provision for jury trials?

Mr. MITCHELL. That is correct.

Mr. NICKLES. But the rest of the private sector is subject to jury trials under title VII; is that correct?

Mr. MITCHELL. That is correct.

Mr. NICKLES. This Senator plans on offering an amendment dealing with jury trials.

Let me ask the majority leader another question. Does the compromise exclude punitive damages under the Mitchell-Grassley proposal?

Mr. MITCHELL. Yes, it does.

Mr. NICKLES. But we have punitive damages for the rest of the private sector.

This Senator plans on having an amendment—it will not take very long—to cover that. But it will be an amendment to the Mitchell-Grassley substitute. And so it would be a second-degree amendment, unless the Senator stacked it already. At some point, I will offer that amendment.

Mr. MITCHELL. The Senator did that on his amendment. We have not done that on this amendment.

Mr. NICKLES. I did not hear the Senator.

Mr. MITCHELL. The Senator said unless the Senator stacked it to preclude a second-degree amendment. My response was the Senator from Oklahoma did that on his amendment. We did not do that on this amendment.

Mr. NICKLES. The Senator has the votes. He does not need to.

I will reserve the right to offer a second-degree amendment.

Mr. MITCHELL. The Senator may offer any amendment he may wish.

I understood the Senator from New Hampshire was going to offer a second-degree amendment.

Mr. RUDMAN. Yes, I will.

Mr. MITCHELL. I will leave that to him, and the Senators can agree among themselves as to the order.

Mr. NICKLES. But nothing in the time agreement would limit second-degree amendments or a reasonable amount of time to discuss those amendments.

Mr. MITCHELL. I am just trying to get the procedural point of the Senator from New Hampshire. After that, if we can get an agreement beyond that, we will try to do so. If not, we will stay here as long as the Senator would like to offer amendments and debate them.

Mr. NICKLES. I will not take very long.

Mr. RUDMAN. I can assure the leader, should my procedural motion fail, I will be very brief to offer an amendment and vote with a very limited discussion, although I dare say there are others who might want to address what I am going to offer as an amendment out of their own personal concern.

Mr. BUMPERS. If the leader will yield before he asks consent, will the leader consider adding 3 minutes to the Senator from Arkansas out of the proponents' time on the amendment?

Mr. MITCHELL. I apologize. I did not hear the Senator.

Mr. BUMPERS. I just ask for 3 minutes on the proponents' side. I may take it, and I may not.

Mr. MITCHELL. As a proponent of the amendment?

Mr. BUMPERS. Yes.

Mr. MITCHELL. Mr. President, I think what is happening, we are already over the time on the proponents. We are in a situation where we are losing time trying to get an agreement to save time. I have not propounded a unanimous-consent request, and I do not intend to propound one.

Why do we not just debate and see how it goes—we are going to stay here until we finish it—and see how long that will be.

I yield the floor.

Mr. RUDMAN. Mr. President, how much time had we hypothetically agreed to for the opposition?

Mr. MITCHELL. I intended to propose 70 minutes of debate; 40 minutes for the Senator from New Hampshire. But I am not offering any unanimous consent right now.

Mr. RUDMAN. I thank the leader. I can assure him I do not think I will use that. I sense I will be very lonely on this floor tonight. I do not think I will have to share my time with too many people. I can kind of sense that this deal has been cut.

Let me start off, Mr. President, by saying to the distinguished majority leader that I greatly respect what he and Senator GRASSLEY have done in this compromise up until the point of judicial review. I think that it was a very fine compromise until we got to the point of judicial review, which in my view, and I am not nearly as cautious as my friend from Maine, a former Federal judge. I will tell him unequivocally, and we can go off the floor later and have a small legal wager on this, that this will be struck down as soon as it sees the light of day. And I say that with all due respect to my friend from Pennsylvania, who wants to offer his views. It is so clear that I have not found a single constitutional scholar I talked to in the last 48 hours that even says that it is even close.

Let me start out by saying that I admire the persistence of my friend from Iowa and the diligence of my friend from Maine in attempting to broker a compromise.

I am a little reminded of a former colleague of ours from the State of Vermont, Senator Stafford. Senator Stafford was a great New England storyteller. He told one story in particular which is, I think, very apropos to these two amendments.

The Nickles amendment, of course was overwhelmingly defeated, as well it should have been.

It seems that up in a small Vermont town, a gentleman who lived high on the hill, who was very penurious and very mean and would throw widows and orphans into the street if they missed their rental, died. On the day of the funeral in the Congregational Church, it was full—not so much with mourners, but probably with celebrants.

And, as is the custom in those New England churches, the minister asked, at the end of the very brief service, if someone would rise and say something nice about the deceased. No one rose. The minister was very nervous and anxious, and he did not feel very good about it, and he said would someone please rise and say something nice about the deceased, and none did.

Finally, after the fourth request, an old farmer got up in the back of the room, had his coveralls on, and he said, "Well, he wasn't as bad as his brother."

The Grassley amendment is not as bad as the defeated Nickles amendment. But it is only a matter of gradation.

Mr. President, I addressed these issues before, and I do not want to address them all again, but I expect we ought to have this record complete. Had the drafters ended this where they should have, I could support it with enthusiasm. Unfortunately, it now has a review by the circuit court of appeals.

Quite frankly, whether it is in the Federal distict court or the circuit court of appeals, the issue is the same. We are going to have judicial oversight over employment decisions of Members of the U.S. Senate. So all of those who intend to vote for this remember that if, as a U.S. Senator, you choose to replace your administrative assistant or your press secretary or one of your key committee people, you may be liable to an action for age discrimination, sex discrimination, racial discrimination, or who knows what else, and I expect, having been the Ethics Committee and noticed the unique and exquisite timing at which complaints reach us, that sometime about 3 months before your election, the case that will have been brought against you 120 days before will get into the appeals court and it will lose all of its privacy and we will read that Senator X, from State Y, is being sued for sex discrimination in his office or her office in Washington.

Now, I will only tell you that by the time you have a chance to respond, you will have been retired to a more luxurious and relaxing life.

The case law on this is clear. My friend from Pennsylvania and I came here together. He is a very artful and accomplished lawyer, very effective, and I expect he will have some things to say about this. But, frankly, there is one case that will strike this down as fast as a lightning bolt.

I want to ask the Senator from Iowa if he would answer one question for me so at least I can be accurate. Would the Senator from Iowa be pleased to answer a question before I at least address this issue?

Mr. GRASSLEY. Well, I will try.

Mr. RUDMAN. I would like to refer to page 27 of the draft. I assume he has a copy of the bill. I am referring to page 27, line 8.

I mean, I just want to understand the logic in what is overall, rather illogical. But this one really stumps me and I want some understanding. At least we ought to have a record on this.

Has the Senator found the line?

Mr. GRASSLEY. Yes, I do.

Mr. RUDMAN. It says:

PRESIDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or

an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 202 but does not include any individual—

(1) whose appointment is made by and with the advice and consent of the Senate * * *.

Am I to understand from that, that if you happen to be a Presidential appointee who is confirmed by the U.S. Senate, you retain your traditional exclusion while nobody else does? Is that correct?

Mr. GRASSLEY. Yes. The Senator is correct.

Mr. RUDMAN. Could the Senator tell me why? What is the distinction? Why should that happen? Maybe the majority leader can answer the question. Could somebody answer that for me because it seems to me we are setting up a super class, here.

Mr. GRASSLEY. I ask the Senator from Maine to help me, but part of this is because of compromise and the necessity, on people here in the Senate, who were firm in their conviction that if we were going to apply the laws equally to the Senate, they were going to apply equally to the executive branch of Government. And this is part of the process of reaching that compromise, where we are covering executive branch employees previously exempt so that they would likewise be covered and have parity there with congressional branch employees.

I would also yield to the Senator from Maine.

Mr. MITCHELL. Mr. President, in response to the question of the Senator from New Hampshire, as he knows and as we have discussed repeatedly throughout the evening, the question is whether this process can be applied in a manner consistent with the separation of powers doctrine of the Constitution. It is the opinion of the Senator from New Hampshire that this cannot be done, and, therefore, this proposal is constitutionally infirm.

The advice of counsel, which we received in the drafting process, was that the inclusion under this provision of persons whose appointment is made by the President with the advice and consent of the Senate would increase the likelihood of the provision being deemed unconstitutional and thereby stricken, because it implicates separation of powers and, of course, is a constitutional provision. And, therefore, in an effort to achieve what I have earlier described sometimes as the conflicting objectives of providing protection and doing it consistent with the Constitution, we agreed, on advice of counsel, to remove that category of persons in what is a candid effort to increase the likelihood that it will pass constitutional muster.

Mr. RUDMAN. I thank the majority leader and the Senator from Iowa. I would only say I think with all due respect to that legal advice, and I am such it is given by many competent people, we have many here, I think there is a very interesting due process problem created within that. It now creates two grades of Presidential employees, those who are excluded because they were confirmed by the Senate and those who are not because they were not. And all I think we have is a new can of worms. But I wanted to make that point on the record.

Mr. MITCHELL. Proving once again the solution to every human problem contains within itself the seeds of a new problem.

Mr. RUDMAN. And I would say to the majority leader, probably the seeds of its own destruction. But that would please me, I just say to everyone.

I want to read again the case of Nixon versus Fitzgerald. We do make laws here. They are interpreted by the U.S. Supreme Court. This statute purports to cover Presidential appointees, other than ones the majority leader and I just discussed. Let me read Nixon versus Fitzgerald, and I am going to be very interested in the argument my friend from Pennsylvania makes about this one.

The case is a 1982 case. Fitzgerald, you might recall, was a very famous whistle blower, worked for the Air Force, uncovered huge fraud in certain defense contracts, was fired, accused the President of conspiring in his firing. Nixon had left office by the time this was reached, but that is not an issue here because it deals with the basic centrality of the issue we are discussing. Here is what the court said:

This Court has recognized that government officials are entitled to some form of immunity from suits for civil damages. In the absence of immunity, executive officials would hesitate to exercise their discretion in a way injuriously affecting the claims of particular individuals, even when the public interest required bold and unhesitating action. We hold that petitioner, as a former President of the United States, is entitled to absolute immunity from damages, liability predicated on his official acts.

What is good for the goose is good for the gander. There is a whole string of U.S. Supreme Court cases, I am not going to bore anybody with them tonight, on separation of powers, and what is good for the President is good for the U.S. Senate. I hope that the majority leader will agree with that.

Mr. MITCHELL. Mr. President, will the Senator yield for me to respond?

Mr. RUDMAN. I will be happy to.

Mr. MITCHELL. I believe that the holding in the case just read makes the point that a President, and by analogy a Member of the Senate, cannot be personally liable in the event a proper case were made, but that it does not preclude the kind of remedy that is made available in this amendment.

Mr. RUDMAN. I think that is true, and I know exactly why the majority leader makes that comment, and I will have a comment in response to that at the appropriate time. Let me simply finish the quote.

The quote finishes from the Fitzgerald case as follows:

Because of the singular importance of the President's duties, diversion of his energies by concern with private lawsuits would raise unique risk to the effective functioning of Government.

What is good for the goose is good for the gander. What is good for the executive branch is good for the Congress. We are three equal branches. It means just that. Not one more equal than the other, but coequal, and the Nixon case is clear on that issue. For that reason alone when I raise a procedural issue I hope it will be supported. After all, we should not knowingly vote for legislation unconstitutional on its face, not on my say-so; on the say-so of the U.S. Supreme Court. It is infirm and unconstitutional.

Let me just move on to the current case law, and it is interesting that this is such a well-settled issue that there are not a great many cases at the U.S. Supreme Court level. There is, however, a very interesting case called Browning versus Clerk of United States House. In that case, the D.C. Circuit held in 1986 that Members of Congress had absolute immunity under the speech and debate clause relating to employment decisions if the position had duties related in some way to the legislative process. Thus, a decision to fire a reporter of debates was held to be nonreviewable. A person doing the work that this lady is doing was held to be involved in the legislative process. I think that is a far reach, but that is what the court decided.

On that point, I had talked to the distinguished majority leader and to the Senator from Iowa and said, look, if at least we want to do this, let us try to make it constitutional. Why not separate those people who have policymaking positions, that is our legislative staffs, our committee staffs, versus those that do not. The cooks, the waitresses, the police, the stenographers, the people who tend the gardens and drive the trucks. Fine, let them have their judicial review. But, no, this body is so frightened by public reaction that we have to do something, even if it means throwing out the baby with the bath water, which is about what we are going to do tonight.

In Walker versus Jones, incidentally, to make this record complete, that same circuit held that the decision to fire a House restaurant employee was reviewable, and that is proper. The House restaurant employee had no policy or legislative function.

In the Browning case, the court said that:

The speech and debate clause is intended to protect the integrity of the legislative

process by restraining the judiciary and the executive from questioning legislative actions. Without this protection, legislators would be both inhibited in and distracted from the performance of their constitutional duties. Where the duties of the employees implicate speech or debate, so will personnel actions respecting that employee.

The standard for determining immunity is whether the employee's duties were directly related to the due functioning of the legislative process. The thing that puzzles me is, with people of good will, why we could not get that compromise. But we could not. I was perfectly delighted to have this entire process be constitutional by separating those policy and legislative people as the court clearly said.

There have been other cases. There is tension in Forrester versus White, which Senator SPECTER spoke about earlier. In that case, the U.S. Supreme Court held that the appropriate test in an employment case where judicial immunity had been raised was the nature of the judge's act, not the duties of the employee, as in the Browning case. I do not think that is much tension at all, and I expect if this is ever reviewed, they will come out the same way.

The Supreme Court in that case said this, and I think it is the most instructive language: "Running through our cases with fair consistency is a functional approach to immunity. Questions other than those that have been decided by express constitutional or statutory enactment"—in other words, speech and debate clause questions—"are different," and they should be.

Mr. President, I doubt if I can change any votes tonight, but for a few minutes I am going to try. I said this afternoon, and I will repeat tonight, this Senate is a very special place with very special obligations, a very rich history and, I hope, a rich future. None of us who serve here will serve here longer than a brief blink of time. And there are some institutional values which are worth protecting.

I thought of reading the Federalist Papers tonight and reading from the debates in Philadelphia, but I decided the hour is late and I am not going to do that. I may send you all a little monograph on that some day. But it was very clear what they meant by separation of powers. Of course, we are subject to the criminal law, as well we should be. If we commit crimes, we will be adjudged of being guilty and we would be so found and so sentenced. If an independent prosecutor should be appointed, he will be, as we are presently covered by that law as the majority leader correctly pointed out on the last amendment.

But, Mr. President, to submit the employment decisions of this body as it relates to our committee staffs and our personal staffs to a review by a judge who is appointed for life tramples any semblance of separation of power that I have ever read or heard of.

I wonder what the Federal district court would say or the Federal circuit court of the United States if the Senate Judiciary Committee proposed, and we passed, a law telling them what their Rules of Civil Procedure would be. It would take them about two lines to tell us what they thought.

Do Members understand that by doing this, because of the unique position that we are in, we are not owners of factories or food stores or restaurants or sport teams or construction companies, we are in the political eye, we are subject to attack by opponents and potential opponents, by each other on occasion.

There has been more malice around here in the last 3 weeks than I have seen in the previous 10 years. This is an invitation for trashing each other in court on trumped-up charges.

Let me tell my colleagues something, and I will not break any confidences. We have a procedure in this place now to handle complaints of a certain type. They are handled by the Ethics Committee. For all of the abuse that committee has taken recently, I think we have done a pretty good job, have done a very good job. They have been private, confidential, and had due process. Lawyers have been there, depositions have been taken, and you did not read a word about it. Not one. Nor should you, because of the sensitive nature of this place.

Under this proposal, if a finding was made and you were adjudged guilty within the body, it would be made known. I think, within 120 days is the period of complaint, if I am not mistaken. But once it gets into that circuit court, not only have you given up all of your rights and your privacy, but you have given up something that is very precious. That is little chance to defend yourself against well-timed, ill-considered, malicious complaints destined to go to court. There are several Members of this body who have told me of incidents that have occurred to them in their home States with complaints that were brought not into the Senate, but in other fora and the problems that it caused those Senators.

This is probably going to be adopted and some people are going to get hurt by it, because it is going to be awhile before it is struck down. Oh, it will get struck down. It will get struck down on Nixon versus Fitzgerald because it applies to the President. It will be struck down by separation of powers and speech and debate because it applies to the Congress.

By the way, it does not apply to all of Congress, it is very unique. I want to tell all my colleagues, this applies to us, not to the House of Representatives. Again, a bifurcated Congress: One set of rules for the Senate, another set for the House. Let me tell you something. If anybody really believes that the American people who are justifiably angry at this Congress for lots of reasons are going to be fooled by this, then you do not give the American people very much credit. They know better.

Why, there was a poll I saw today in which they think that 46 percent of those of us who seek public office are, get this, corrupt. Corrupt. That is the view in which this body is now held.

Does anybody really believe that they think we are going out and doing this really? Of course not. Of course not. They know better.

And why do they know better? Because of a very unique provision in this bill, which was in the original Grassley bill. I have heard all night that we should be treated like everybody else, which of course is absurd, but it has been repeated over and over again. And we are told that this is going to treat everybody here like everybody else.

If the local company in New Hampshire is guilty of discrimination, he will be fined, or damages will be assessed, and they will come right out of his or her pocket. Or the local shoe store, or the restaurant, or the university, or whatever; and if it is a large public corporation, out of the treasury of that corporation. Thus the stockholders, who are the owners, beneficially will pay.

But guess what? Oh, we are treating ourselves differently except when it comes to paying money, and that is the sophistry of this whole scheme. In this case if I discriminate against someone in my office based on age, national origin, sex, whatever, and it goes all the way to the court, and a finding is against me with $250,000 worth of damages, I do not pay that. The Grassley amendment says that the American taxpayer pays that.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. RUDMAN. Yes.

Mr. JOHNSTON. Is the Senator telling us that under this amendment the taxpayer is supposed to pay for our transgressions? And that based on that, we expect the American public to believe we are treating ourselves the same as the great public out there? Is the Senator actually saying that?

Mr. RUDMAN. As astounding as that seems, and that is not all—I have more to tell the Senate—as astounding as that is, that is precisely right. As a matter of fact, what we are really saying here is, yes, we are equal but slightly more equal than others, and the place that counts is in the pocketbook. Sticks and stones will break your bones but fines will break you, really.

In addition to that, there are attorney's fees here, and these lawyers who will descend on this place will get their attorney's fees paid by the taxpayers of the United States.

So tell everyone how wonderful this is, how equal we are. We are so brave,

so courageous, except we will not pay our own damned bills.

Well, I intend to fix that before this night is over, and I yield the floor.

Mr. MITCHELL addressed the Chair.

Mr. CHAFEE. May I ask——

The PRESIDING OFFICER. The majority leader.

Mr. CHAFEE. I was just going to ask a question. This in theory is to treat everybody the same. Does this provide for a jury trial?

Mr. RUDMAN. It does not.

Mr. CHAFEE. I see. And are there caps on the damages or how does that work?

Mr. RUDMAN. I do not believe there are caps on the damages, no. There are not.

Mr. CHAFEE. I thought we were treating everybody the same.

Mr. RUDMAN. Everybody the same? We are not treating everybody the same because if Senator CHAFEE, my friend from Rhode Island, gets a $300 judgment against him——

Mr. CHAFEE. Let us not use that as an illustration. As an individual.

Mr. RUDMAN. As an individual—he will not pay. And if the Senator from Rhode Island were running a factory in Rhode Island, or a store, and this was levied against him, he would pay. All of our constituents must pay those damages but not us. We will just send the bill down to Nick Brady and tell him to issue a check.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, first off, I say to the Senator from Rhode Island, he has stated the argument of the proponent of the previous amendment, not this amendment. Maybe there is a little time warp in here, but I have not stated—in fact, I regret that it is apparent now that my remarks were not understood by the Senator from New Hampshire, Rhode Island, or apparently anybody else, because I have said over and over again that we are not trying to provide identical processes for Senate employees to those provided under law.

Mr. RUDMAN. I stand corrected. I would say the Senator said that three times today. He is absolutely correct. He did say that. That of course does not make it right.

Mr. MITCHELL. No. I understand.

Let me repeat it then for the benefit of the Senator from Rhode Island. We are not trying to do that. We are trying to achieve similar protection of the law for Senate employees by a procedure that is analogous to but not identical to that provided to private citizens.

The Senator from Oklahoma has already said he is going to offer an amendment, several amendments, to try to substitute for those analogous procedures, which he tried to do in an earlier amendment which failed. The Senator from Rhode Island may do the same. But please do not misstate or misconstrue the argument of the Senator from Iowa and myself. We have not argued that this treats everybody exactly the same. We have made precisely the opposite argument.

We have said that what we are interested in is a substantive result of protection of law for Senate staff, the same as that accorded to others. The procedures intended to achieve that result are different because of the constitutional separation of powers doctrine. And I said in my prepared statement and my extemporaneous remarks just about what I said here on at least three occasions.

Now, let me address the argument, if I might, of the Senator from New Hampshire and the comment made by the Senator from Louisiana. It is news to me—perhaps other Senators found out for the first time—that if an employee of a company is subject to a charge that involves back pay, which most of these cases involve; that is the bulk of it—the employer pays out of his or her pocket. I had not heard that. I thought that the responsibility for pay was the responsibility of the company.

And if we want to carry arguments to their logical and absurd extreme, if the Senators from Louisiana and New Hampshire are suggesting that a Senate staffer who is entitled to back pay, that the pay ought to be from the Senators, not from the taxpayer, then would the Senators like now to offer to pay all of their own staff salaries out of their own pocket? Where do staff salaries come in?

Mr. RUDMAN. Will the Senator yield?

Mr. MITCHELL. They come from the taxpayer. That is where they come from. And if a person brings a suit and is entitled to back pay, it is a new, I might say, a rather startling doctrine that Senators are going to start paying their staffs out of their own pockets. Maybe the Senator from Louisiana does that.

Mr. RUDMAN. There are a few here who could.

Mr. MITCHELL. I was unaware of it. I want to confess to the American people and the people of Maine, my staff is paid by the U.S. Treasury.

Mr. RUDMAN. Will the Senator yield?

Mr. MITCHELL. I do not pay them personally. I do not know a Senator who does.

Mr. RUDMAN. Thirty seconds.

Mr. MITCHELL. Yes.

Mr. RUDMAN. The Senator's analogy is hypothetically correct, but I would point out in the State of Maine or the State of New Hampshire, most of these companies are run by sole proprietors or families and they are being levied damages which they do not believe they should pay and they are paying them out of their own pocket. You may call it the ABC Co., but the fact is they are sole proprietorships or small corporations.

Mr. MITCHELL. Mr. President if I might just respond to that, if I might just respond——

Mr. RUDMAN. Certainly.

Mr. MITCHELL. Under this provison——

Mr. RUDMAN. I did not realize the U.S. Senate was a family business.

Mr. MITCHELL. Companies with 15 or fewer employees are exempt from the provisions of title VII as applied here.

Mr. RUDMAN. I understand. But there are many companies in Maine and New Hampshire with between 50 and 300 employees owned by a family or by a small group of people and it comes out of their pocket. With all due respect to the majority leader, this comes out of the pocket of the taxpayers. And I must say that although there are some here who may not accept that, I think most people watching will accept it.

Mr. DOMENICI. Will the Senator yield?

Mr. JOHNSTON. Mr. President, will the majority leader yield for a question?

Mr. MITCHELL. I yield the floor.

Mr. JOHNSTON. I thought I was correct in my recollection that under the Civil Rights Act the proper defendant is anyone acting under color of law, whether he acts as an individual or not, and thereby subjects himself possibly to compensatory damages as well as punitive damages. Let us say he is a sheriff or corporation president. If he is acting under color of law, then he is the defendant, and he might possibly have to pay, is that not right, I ask the former judge from Maine?

Mr. MITCHELL. Mr. President, I want to say I think we are caught in an interesting squeeze here. The Senator from Oklahoma is critical of this bill because it does not provide all of the same remedies for people in the private life, such as punitive damages. The Senators from Louisiana and New Hampshire are critical from the other side saying, well, but what it does provide is too much because it is going to be paid for by the taxpayers. It suggests to me Senator GRASSLEY and I are probably right on course, right in the middle, getting it from both sides here.

I suggest to my colleagues that in any event the Senator from New Hampshire is going to offer an amendment, as he has already told me, to make Senators personally liable, the Senator from Louisiana will have the perfect opportunity to make himself personally liable for whatever occurs, apparently consistent with his prior statement.

Mr. DOMENICI. Mr. President, I want to use 1 minute. I want to say to

the distinguished majority leader, I think I understand the chore he undertook here, and why he has concluded as he has. But I would suggest that one of the principal reasons given for this legislation, not necessarily that he produced this compromise, but the original legislation, one of the principal reasons was the American taxpayer wants us to take some of the medicine that they are taking. And, essentially, the real medicine is paying the bill.

That is what is wrong with this. You can go home, for those who want to vote with Senator RUDMAN, and you can say it did not do what it said because the taxpayers are going to pay for whatever the Senator or his office does that is wrong. That may be what he had to do to make it constitutional, but at the same time he probably made it such that many of us can say we will go to these town meetings. We will go there after we vote against this and we will say, "Did you want the taxpayers to pay this?" They are going to all say no. We will say, "Well, we are on your side."

Mr. MITCHELL. Mr. President, let me just say that I have long felt that the ingenuity of Senators to explain or defend their votes is without limit. [Laughter.]

I, myself, seek to defend and explain every vote I cast. I respect the Senator's statement.

Mr. DOMENICI. This was an easy one, however, I might say. I did not have to work hard on this.

Mr. MITCHELL. Any Senator who wishes to vote against this may do so. Certainly, this will not be the first time nor the last that a Senator is going to be criticized whichever way he or she votes on this. You can make an argument against it. In fact, several arguments have been made against it, some of them with a good deal of force, politically.

On the other hand, if you believe, as I believe, that the persons who are employed in the Senate ought to be entitled to the same substantive protections of law that other employees are, and that given the constraints of the Constitution and the requirements of the separation of powers doctrine, there are limitations upon the manner in which those protections can be provided, then this is an approach that attempts to achieve that middle ground.

I do not dispute the validity of any of the statements made here in criticism of this. That is true of virtually any bill that can be offered. The Senator from New Hampshire has made a very powerful and compelling argument against it, as have other Senators. Senators must choose which arguments have greater weight and more control. I believe the arguments in favor of the amendment are compelling. I certainly respect the view of Senators who have a contrary view, including the point made by the Senator from New Mexico.

Mr. NICKLES. Will the majority leader yield for a question?

Mr. MITCHELL. Certainly.

Mr. NICKLES. I heard the majority leader state once or twice that it was his intention to try to be close to general practices but also wanted to be constitutional. In his amendment with Senator GRASSLEY, you have the judicial review. Unlike the Senator from New Hampshire, I happen to think that is a good provision.

But would the majority leader explain why we would not have rights to jury trial if we provide that for all the private sector, we do have the judicial review, so we bypass the constitutional argument, why we will not give congressional employees the right to a jury trial just like we do the private employees throughout the country?

Mr. MITCHELL. We have proposed an alternative procedure for factfinding as described in the law, counseling, mediation, formal complaint and hearing which we believe reduces the likelihood of this being found constitutionally infirm.

Clearly, the Senator from New Hampshire feels that by including any involvement by the Federal judiciary, specifically review by the appellate court, we make it unconstitutional. But as with the earlier provision discussed respecting Presidential appointees that are subject to the advice and consent of the Senate, we have attempted to do it in a way that reduces the likelihood of the provision being stricken down, and we believe that establishing an analogous internal factfinding procedure with the right of appellate review comes closer to making it constitutionally acceptable.

Mr. NICKLES. If the majority leader will yield a minute further, I have no problem with the factfinding panel and so on. But my problem is you have a judicial review. Why not have a jury trial as we allow for all the private sector?

I compliment the majority leader for having judicial review, and I compliment Senator GRASSLEY because he has been steadfast in pushing for that. But why eliminate the step that we are getting ready to expand? The major change—correct me if I am wrong—but the major change we are making in this bill is applying title VII to jury trial and punitive damages. Why would we exempt Congress from jury trial and punitive damages under his proposal?

Mr. MITCHELL. I have just stated the reason I felt that the Senator does not accept it. I respect the fact that he does not accept my view. Let me say I believe, with all due respect, that the Senator from Oklahoma mistakenly confuses process with substance, that his entire argument throughout this proceeding, including his earlier amendment, has been the only way that you can achieve the same result is to have the same process.

So he seeks to have a mechanical repetition of the process here that is used in other areas. I suggest that is not possible because of the constitutional requirements.

I further suggest it is not necessary and is contrary to common sense and our entire legal system. There is nothing in American law or history that suggests that you can achieve a fair result only if you follow a precise procedure.

Let us take jury trials. Jury trials are available for some grievances. They are not available for all. Many States are adopting legislation which limits, restricts, and in some cases eliminates the right and requires alternative methods of resolving disputes.

Are we to say that because one process has been established in one case in one method of dealing with the problem that the only way you can get a fair result is to follow that process exactly? Is that the Senator's argument? I respectfully disagree. I do not agree. We operate from a completely different premise.

Mr. NICKLES. Mr. President, I will not be long. I know Senator SPECTER has some points to make. I would like to make a couple of comments.

One, I compliment Senator RUDMAN. At least he is consistent. He was stating that constitutionally we would have a problem with the Nickles amendment. He says this is still unconstitutional because it has judicial review. He did not want the executive branch to have anything to say about it. He does not want the judicial branch to say anything. So he is consistent. I applaud that.

But this amendment does have judicial review, but it does not have jury trial. My colleagues are aware that the big debate on this bill, the civil rights bill, hinged on two or three things. One was on jury trial and the other was on damages.

The Mitchell-Grassley amendment has damages. It has compensatory damages. But it does not have punitive damages. And there was a big battle over whether or not we would have punitive damages.

So the amendment that we have before us now exempts Congress from punitive damages. It exempts Congress from jury trials. A lot of people were concerned about jury trials for the private sector, and a lot of people were concerned about punitive damages in the private sector.

But we made that happen on all the employers of the country, except for when it came to Congress, and we just exempted ourselves from jury trials and from punitive damages. I find that to be very inconsistent, and you cannot hide behind the constitutional argument, because it does have judicial review.

So I just mention to my colleagues that you are going to see a lot of head-

lines that say "Congress exempts itself from the civil rights bill," because we exempted ourselves from punitive damages, and we have exempted ourselves from jury trials.

I will have a second-degree amendment that I will offer in the near future to try to remedy that injustice.

Mr. METZENBAUM. Mr. President, I rise in support of this Grassley-Mitchell amendment, which would significantly broaden the applicability of title VII, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the Rehabilitation Act of 1973 to employees of the Senate and White House staff.

This is a great day for the people, because we—the U.S. Senate—are finally accepting the principle that we must practice what we preach. I believe that Senate employees and White House employees are entitled to the same rights and remedies as other Americans. I am thankful that the compromise agreement on civil rights has presented us with an opportunity to do what we should have done many years ago.

For many years, I have been a strong supporter of proposals to extend the coverage of Federal employment statutes to employees of Congress. I also would like to recognize the hard work of my colleague from Ohio, Senator GLENN, in pursuing this goal.

Over the past 4 years, many of us in this body have frequently cosponsored labor and civil rights legislation which included broad congressional coverage. When the Americans With Disabilities Act was being debated in this body last year, we approved a resolution to cover congressional employees who are ability-impaired. That resolution became law, but we are replacing it here with even broader protection. When the Family and Medical Leave Act was being considered this year, many of us supported a substitute that covered congressional employees. I am pleased to say that substitute has passed the Senate.

When we introduced the Comprehensive Occupational Safety and Health Reform Act this year, I made sure as a coauthor that the bill included a provision which wipes out the 20-year-old OSHA exemption for Congress.

In addition, in the 100th and 101st Congresses, I along with others, cosponsored the Fair Employment in Congress Act, authored by Senator LEAHY. This legislation proposed to eliminate the exemption for employees of Congress from a broad range of labor and civil rights statutes. Unfortunately, that bill was never acted upon by this body.

During consideration of civil rights legislation last year, many of us voted for a broad, bipartisan congressional coverage amendment which was ultimately included in the civil rights legislation vetoed by the President. I also supported an even broader amendment offered by Senator GRASSLEY which would have permitted employees of the Senate to file lawsuits against Senators for violations of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. That amendment was ultimately defeated.

During consideration of each of these pieces of legislation, I have been guided by one fundamental principle in addressing congressional coverage issues. That is the principle that we in Congress should not treat ourselves differently from the rest of the country when it comes to legislation designed to protect hardworking Americans.

Of course, we must be careful that any provision we adopt is consistent with the Constitution. A provision that is struck down in the courts would be of no use to Senate or White House employees. But within those bounds, we should treat ourselves just as we treat other employers in this country, and we should provide the same protections and rights to our employees and to White House employees that we provide to the rest of the working men and women of this country.

By providing employees of the Senate and the White House with an opportunity to seek judicial review of claims they have filed against their employers, this Grassley-Mitchell amendment goes a long way toward putting Senate and White House employees on an equal footing with their private sector counterparts. I urge my colleagues to support this amendment.

Finally, I want to add a few words on the compromise solution to overturn Wards Cove. As the author of the original bill to reverse that decision, which was included as part of the Civil Rights Act introduced by Senator KENNEDY, I feel keenly about the importance of this issue.

Under this legislation, employment practices which have a disparate impact on a protected group will be unlawful unless they are job related for the position in question and consistent with business necessity. In this context, the phrase "job related" is a term of art which means that the practice must be related to job performance. A recent study by the law firm of Fried, Frank, Harris, Shriver & Jacobson for the NAACP Legal Defense and Educational Fund, Inc. found that in 96 percent of all of the post-Griggs, pre-Wards Cove title VII disparate impact cases the courts used that standard of job relatedness.

This is consistent with a short interpretive memorandum Senator DANFORTH inserted into the RECORD last Friday. That memorandum notes that, as used in the bill, the term "job related" is intended to reflect the concepts enunciated by the Supreme Court in Griggs and in other Supreme Court decisions prior to Wards Cove.

In addition, plaintiffs will be permitted to challenge a group of practices which together produce a disparate impact where the practices are not capable of separation for analysis. Of course, implicit in this rule is the notion that plaintiffs be permitted to try to ascertain the specific contribution of each practice in the group to the disparate impact, through the discovery process. Thus, the standard of not capable of separation for analysis means not capable of separation after reasonable discovery has been conducted. It obviously does not mean "physically or logically impossible to separate."

I also should clarify the effect of requiring plaintiffs to demonstrate that each challenged practice caused the disparate impact. Causation here does not mean that each practice in the group must have caused the disparate impact by itself. For example, if an employer uses two practices in making hiring decisions, and the plaintiff establishes that each practice is responsible for 50 percent of the disparate impact, the employer should not be permitted to argue that neither practice caused the disparate impact.

I ask unanimous consent that the full text of my remarks be included in the RECORD as if read.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the debate which is unfolding this evening on the amendment of the distinguished Senator from Iowa, I think, shows a little too much haste on the part of the Senate in rushing to this particular solution, and I think tonight's debate really illustrates the proposition that there are two things you do not want to see made—sausage and legislation.

Tonight we are seeing legislation made as we are moving through this process. If we are going to finish this tonight, it is going to be a late night. I think we are going to see a great many amendments on jury trials, the elimination of counsel fees, and the elimination of the provisions that taxpayers are going to have to pay the award.

As the Grassley amendment moves farther away from the existing civil rights law, the more problems are being created. Mr. President, there is no constitutional prohibition, in the opinion of this Senator, to have the generalized provisions of the civil rights bill apply, because the speech and debate clause does not preclude it. Article I, section 6 of the Constitution states: "for any speech or debate in either House"—and it refers to Members of Congress—"shall not be questioned in any other place."

But that relates, Mr. President, to having absolute immunity on what we do on this floor, and in our legislative function, and in hearing processes; but it does not preclude the remedies under the civil rights bill.

It is a mistake for us to carve out exemptions, which has the rest of the

country in the position of second-class citizens and require the taxpayers to pay our damages. I think that before we are finished with this amendment, there will be considerable modification in just that way.

Mr. President, earlier on the Nickles amendment, there was debate which I had offered on the subject of the constitutional issue. And the distinguished Senator from New Hampshire has again referred to the Browning case which, on its face, appears to pose a constitutional bar to the Grassley amendment. But as I pointed out earlier—and it is worth repeating briefly—the Browning case was undermined by a later Supreme Court decision in Forrester versus White, and that was specifically acknowledged by the Court of Appeals for the District of Columbia circuit in Gross versus Winter which said, "Browning is undermined by the Supreme Court's later decision in Forrester."

So that the cases which are on record, Mr. President, by the Supreme Court of the United States, really stand for the proposition that the Civil Rights Act could be applied to the Senate.

The closest case is the case of Davis versus Passman, and in that case, where there was a suit by a former congressional staff member against a Congressman, charging violations of the fifth amendment for sex discrimination and termination, the Supreme Court, in the extensive footnote 11, left the question open as to whether that implicated the speech and debate clause.

In the case of Gravel versus United States, the Supreme Court of the United States made it plain that Members and their aides, who had the same status as Members, were not immune from processes of a grand jury, even when the activities involved proceedings and hearings.

So that I think on a fair reading of the constitutional law there is a sound basis for concluding that the speech and debate clause does not preclude incorporating the entire text of the civil rights bill. And I believe that before we are finished here this evening, that will in fact be done, that the provisions for eliminating taxpayer payment for awards against Senators is certainly going to be amended, as will other parts, which distinguish the Grassley amendment from what has been proposed in the civil rights bill generally.

The Senator from New Hampshire raises the case of Nixon versus Fitzgerald. I submit, Mr. President, as a threshold issue, that we do not have a goose and we do not have a gander here; but if you accept the conclusion that the President is not liable for the civil damages, that is about the same immunity which the Congress has under the speech and debate clause.

The Nixon versus Fitzgerald case goes on, I think, to, in any event, distinguish rather conclusively the duties of the President and the duties of the Congress. Page 756 or 457, United States Reports, the Supreme Court refers to "the special nature" of the President's constitutional office. It refers to his discretionary responsibilities, which are obviously much different and much more extensive than the responsibilities of a Member of Congress.

The Court also notes that there are many circumstances where there is jurisdiction over the President of the United States, and it cites the subpoena case of the United States versus Nixon and the seizure of the steel mills. And the Court goes on to say, page 754: "but other cases also have established that a court, before exercising jurisdiction, must balance the constitutional weight of the interest to be served against the dangers of intrusion on the authority and functions of the executive branch."

Nixon versus Fitzgerald does not at all affect the propriety of applying the civil rights bill to the Senate of the United States.

I submit that there is no constitutional impediment to doing so under any of the deciding cases, and I think it would be interesting, as the Senate works its will, in structuring an amendment to what Senator GRASSLEY has proposed; and I credit him for his longstanding efforts here and would note that I have supported him the last two times he has proposed this amendment, long before the issue of the congressional reputation came into sharp public focus.

But I think it is important that the Senate be covered by the civil rights bill. If I drafted the amendment, I would not have excluded the House of Representatives, candidly, even as a matter of comity between the bodies. I did not draft the amendment, and I support the basic thrust of what the Senator from Iowa has done here. I think that in the conference which was worked on yesterday, and worked on again this morning, there has been a hodge-podge of an amendment which leaves a great many infirmities. We have already started to point some of those out, and I think we will deal with them through the amendment process this evening.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, could I ask how many would like to speak, so we might get a time certain? I believe Senator JEFFORDS would like to have 5 minutes, Senator SEYMOUR 5 minutes and the Senator from Virginia——

Mr. WARNER. The Senator from Virginia indicated earlier a desire for 6 to 8 minutes.

Mr. FORD. On this amendment?

Mr. WARNER. That is right.

Mr. FORD. How about 5?

Mr. WARNER. Five it is.

Mr. FORD. All right.

That is 18 minutes.

Mr. WARNER. Mr. President, I would urge our distinguished whip for the majority, this is a very, very serious piece of legislation.

Mr. FORD. All we are going to do is get to the procedural vote of the distinguished Senator from New Hampshire. Once that is done, then it is all over.

Mr. WARNER. That may be a wee bit optimistic.

Mr. FORD. I say when we get to that in 30 minutes, then if that passes, then it is through. If it does not, then the floor is open for additional debate.

Mr. WARNER. I would simply say to the distinguished Senator from Kentucky, this is very important. The Senator from New Hampshire has already showed his hands on the table.

Mr. FORD. I do not want to argue over unanimous consent. I would like to, 30 minutes from now, get a vote, say at 10:40, and give everybody 5 minutes; the Senator from New Hampshire 5 minutes, and the majority leader 5 minutes. And that would be 30 minutes. and we could vote at 10:40 on the procedural motion of the distinguished Senator from New Hampshire.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Is there a procedural motion pending?

Mr. DOMENICI. No; it is not pending.

Mr. PRYOR. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Arkansas reserves the right to object.

Mr. PRYOR. Mr. President, I will not object. In fact, I do not even know if the distinguished Senator from Kentucky made a unanimous-consent request. I would like, if I might, to reserve 10 minutes on behalf of my colleague, Senator BUMPERS, who is not on the floor. He will want to speak on this.

Mr. FORD. Mr. President, I ask unanimous consent that at the hour of 10:50, we proceed to vote on the procedural motion by the Senator from New Hampshire; that prior to that, Senator JEFFORDS will receive 5 minutes; Senator SEYMOUR will receive 5 minutes; Senator WARNER will receive 5 minutes; Senator CHAFEE will receive 3 minutes; Senator BUMPERS will receive 10 minutes; the Senator from Alaska, 3 minutes; and the majority leader, 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, reserving the right to object.

Mr. CHAFEE. I would like to ask a question, if I might, of the distinguished whip. What is the procedural motion of the Senator form New Hampshire?

Mr. RUDMAN. I am not sure I am compelled to answer that question. But I will. If the distinguished acting majority leader will yield, I believe that is

a classic case, if you read the rule book, of not having to vote on this issue as it is presented, but truly voting, as the Senator has certainly voted, on issues involving the U.S. Constitution.

Thus, under our rules, I will raise a constitutional point of order, which I will explain in brief detail. It is my understanding that under the rules of the Senate, the Chair will not decide that issue, but the issue will then be put to the Senate for a vote.

Mr. NICKLES. Mr. President, reserving the right to object, and I shall not object, except I wish to inform the acting majority leader, as I did the majority leader, that I do have an amendment that deals with this, and I would assume upon the conclusion or disposition of the Rudman point of order, then I will offer my amendment.

Mr. FORD. I say to all my colleagues once the motion has been made and completed, however it turns out, then the Senator from Oklahoma will be perfectly in order.

Mr. RUDMAN. Mr. President, if the Senator will yield, I would like to make one sentence to the Senator from Kentucky: Of course, if I prevail, it is all over.

Mr. FORD. Did I say if the Senator prevails it is all over?

Mr. RUDMAN. He said we go on after the vote?

Mr. FORD. We can go on to other things.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, now that we have this, I hope we can get the vote, then, at 10:50.

The PRESIDING OFFICER. Under the unanimous-consent request, the Chair will recognize those Senators who have been listed by the Senator from Kentucky.

Who seeks recognition?

The Senator from Vermont is recognized for 5 minutes.

Mr. JEFFORDS. Mr. President, I rise in support of the amendment of the Senator from Iowa. I think we have to put things in perspective here. We may not like the amendment; we may not agree with it. But it is the only thing which will give our employees some parity in this situation.

We can argue about the right to jury trial; we can argue about whether or not it is appropriate to have an appeal. But the question is whether or not we want to provide some relief to our employees that have none now.

I would like briefly to go through the history leading up to the situation we have this evening. We had never covered either the executive branch or the legislative branch under any Civil Rights Act until the early 1980's. At that time, I was in the House, and I got an amendment on to cover the executive branch under section 504 of the Rehabilitation Act. I tried very hard to get Congress under that one, and it failed.

Many of us have been fighting ever since to achieve this kind of equality on various pieces of legislation. A year ago, we included Congress for the first time under the Minimum Wage Provisions of the Fair Labor Standards Act, and that is working fairly well. Now all we are doing is expanding coverage to our employees in a way that seems to be sensible and reasonable under title VII.

I hope that the Senator's amendment will prevail.

Mr. President, at this time, I also would like to discuss a little bit of the history of the bill itself. A considerable amount of work has gone into this bill since it was introduced February 7, 1990, as S. 2104.

We had hot debates on many of the issues, but finally it was worked out. The Senator from Missouri [Mr. DANFORTH] made some substantial amendments which were introduced as a major breakthrough on April 4, 1990. I commend also the Senator from Pennsylvania, Senator SPECTER, who also worked very hard on these issues.

But we did not stop then. We continued negotiations with the administration, and on July 12, I know that summer evening many of us spent many hours talking and discussing a proposal made by John Sununu.

Mr. President, I ask unanimous consent that a copy of that proposal be printed in the RECORD.

There being no objection, the proposal was ordered to be printed in the RECORD, as follows:

JOHN SUNUNU PROPOSAL, JULY 12, 1990

The term required by business necessity means:

(1) in the case of employment practices primarily intended to measure job performance, the practice or group of practices must bear a significant relationship to successful performances of the job.

(2) in the case of other employment practices that are not primarily intended to measure job performance, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

In deciding whether the above standards for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The court may rely on as such evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence and the court shall give such weight, if any, to such evidence as it deems appropriate.

LEGISLATIVE HISTORY

There would also be in the statute the following language, "This language is meant to codify the meaning of business necessity as used in Griggs and other opinions of the Supreme Court.

Mr. JEFFORDS. We continued to debate and negotiate, and finally, on July 18, we passed a bill. And at that time, Senator HATCH stepped up and tried to bring us together on a compromise, proposing language which was agreed to by the bills sponsors. Unfortunately, the administration failed to go along with it. But we moved on, we included the Hatch proposals in the bill even without the agreement of the White House.

We continued to negotiate and debate until, on September 6, we had another long session with the administration. And again the administration came forth with a proposal by White House counsel Boyden Gray in which he marked up the language of the bill passed by the House.

I ask unanimous consent that a copy of the Boyden Gray markup language of September 6, 1990, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BOYDEN GRAY MARKUP LANGUAGE, SEPTEMBER 6, 1990

(o)(1) The term "required by business necessity" means—

(A) in the case of employment practices primarily intended to measure job performance, the practice or group of practices must bear a significant relationship to successful performance of the job; or

(B) in the case of other employment practices that are not primarily intended to measure job performance the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

Mr. JEFFORDS. So we reviewed that very carefully, in long dissertations and efforts, to try and determine whether or not we could accept it. The response of those of us who ended up opposed to that was made by Bill Coleman in a letter dated September 7, 1990, which explained why that particular proposal could not be allowed to be the center of a compromise.

Mr. President, I ask unanimous consent that a copy of that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

O'MELVENY & MYERS,
Washington, DC, September 7, 1990.

Re Civil Rights Act of 1990.

Hon. JOHN H. SUNUNU,
Chief of Staff,
The White House, Washington, DC.

DEAR GOVERNOR SUNUNU: So far my negotiations with Boyden have not resulted in the success which you and I wanted to achieve, to wit, a Bill which by precise wording expressed what you and Senator Kennedy meant when you met on July 12, 1990. Such result would achieve a Bill which the President would sign. At my meeting with Boyden all that resulted was that Boyden marked up the House bill so as to make it word for word what he always claimed the language should be even though I thought you had acknowledged that that language created confusion and the Coleman-Gray meeting was to clear up the confusion so we put in writing what you and Senator Kennedy meant.

I know you are going off to Helsinki today, but I want you to know that there are no

meaningful negotiations going on because Boyden has not retreated one inch from the language which I think both you and I recognize creates some problem. I tried to clear the problem up by introducing a subsection C which would read as follows:

"C. Where the employer proves that its employment decisions was based primarily on rules relating to the use of illegal drugs, excessive drinking on the job, attempting to create a smoke free environment or plant termination or bankruptcy such employment decision is to be measured by B. above and not A. above."

I told Boyden that you might want to add other provisions to this sentence but this was the approach which would solve your concern and my concern, namely that B. would not be interpreted as swallowing up A. which is my concern and from your point of view that A. would not be interpreted as swallowing up B.

I also pointed out to Boyden that with respect to his change in (3) in which he would strike the language which said that the intent is to overrule *Wards Cove* and instead say that business necessity was to be understood as used in *Griggs* and "other opinions of the Supreme Court" did nothing but reenact Ward Cove which is the basis for all our difficulties. Such approach rejects the overwhelming consensus in the Congress and among many in the Administration that *Ward Cove* should be overruled.

I send this letter to you now even though I know you are about to engage on a trip of essential interest to the country because I did not want you or anyone else to feel that meaningful negotiations were going on to close the gap. I hope that when you return on Monday you will be able to meet with me and if we cannot work it out that you will inform the President and then he would make available to me the time he promised when he telephoned from Kennebunkport. I continue to believe as you do that it is essential in the public interest that the Congress and the President reach an agreement on a Bill which both will support. It is, moreover, as you know, my judgment that the Bill as passed by the House is such a Bill but I stand ready to discuss any changes which you feel that the President needs in order to discharge his constitutional responsibility.

With kindest regards,

Sincerely,

WILLIAM T. COLEMAN, Jr.

Mr. JEFFORDS. Subsequently, our bill went over to the House, and the House passed it, and it came back here for conference. On October 16, we passed a conference report. Before that, we had continued negotiations up until that time. On September 21, we had another proposal, which came from the White House. We examined that very thoroughly, and unfortunately we could not reconcile the problems.

I ask unanimous consent that that proposal, entitled "John Sununu, September 21, 1990, Proposal by Boyden Gray," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOHN SUNUNU, PROPOSAL BY BOYDEN GRAY, SEPTEMBER 21, 1990

Delete subsection 701(n) and reletter. Delete subsection (o) and insert in lieu thereof the following:

"(n)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices primarily intended by the respondent to measure job performance by tests, evaluations, requirements of education, experience, knowledge, skill, ability of physical characteristics, the practice has a manifest relationship to the employment in question; or

"(B) in the case of employment practices that are not primarily intended by the respondent to measure job performance, such as, but not limited to, legitimate community or customer relationship efforts, veracity requirements, job safety or efficiency, rules relating to drug, methadone, alcohol or tobacco use, rules relating to compliance with local, State or Federal laws, rules relating to a prior criminal record, and selection criteria designed to screen applicants for the potential for future promotions, the respondent's legitimate employment goals are significantly served by—even if they do not require—the challenged employment practice.

"(2) In deciding whether the above standards for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient, demonstrable evidence is required. The court may rely on as such evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence and the court shall give such weight, if any, to such evidence as it deems appropriate."

Exclusive Legislative History for Sections 3 & 4: "This language is meant to codify the meaning of business necessity as used in Griggs and other opinions of the Supreme Court."

In subsection 703(k)(1), strike "under this section" and insert in lieu thereof "only". Strike subsection 703(k)(2) and renumber. Strike subsection 703(k)(1)(B) and insert at the end of (A) the following: "provided, however, that if the elements of a decision-making process are not capable of separation for analysis, they may be analyzed as one employment practice, just as where the criteria are distinct and separate each must be identified with particularity."

Legislative History: Agreement that plaintiff can plead the elements of a decision-making process as one employment practice, and the determination of whether the elements in fact are not capable of separation for analysis shall be made after discovery.

(Note: Such a paragraph would be added at the end of the legislative history attached to Gov. Sununu's July 10 letter to Sen. Kennedy, with the last five words before the citation eliminated, as agreed, from the end of the last paragraph.)

Mr. JEFFORDS. Mr. President, that did not end it. We continued to work, and as you may remember, we passed the conference report on October 16, trying out best to be able to get something which the President could approve.

However, at that time, as you may remember, we did not get the sufficient votes on it to indicate that it would not be vetoed. It was vetoed.

After it was vetoed, the President came back and gave us his answer in his veto message.

I ask unanimous consent that a copy of that veto message of October 22 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRESIDENT'S VETO MESSAGE OCTOBER 22, 1990

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) (1) The term 'required by business necessity' means—

"(A) in the case of employment practices that are defended as a measure of job performance, the practice must bear a significant relationship to successful performance of the job; or

"(B) in the case of other employment practices that are not defended as a measure of job performance, the practice must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards described in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The court may rely on as such evidence statistical reports, validation studies, expert testimony, performance evaluations, written records or notes related to the practice or decision, testimony of individuals with knowledge of the practice or decision involved, other evidence relevant to the employment decision, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

Mr. JEFFORDS. Mr. President, in the compromise proposal before us today, the parties have specifically included the requirement of job relatedness by providing that practices with disparate impact can be defended only if they are "job related for the position in question and consistent with business necessity." The use of the conjunctive "and" is very significant for it clarifies that the job related prong must be present in all cases even where other aspects of business necessity are asserted. The choice of proving either one or the other prong is not preserved in this compromise.

The term "business necessity" is not defined in the statute, but one stated purpose of the act is "to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in Griggs * * * and in other * * * decisions prior to Wards Cove." Thus, I submit, Mr. President, that the compromise bill will reinstate the law of Griggs that selection practices which have the effect of screening out women or minorities may be defended only on a showing that the practices are in fact job related.

DAMAGES FOR INTENTIONAL DISCRIMINATION

As recent days have shown, no issue has become more politicized than the inclusion of compensatory and punitive damages in the civil rights bill. When first proposed in the 1990 bill, the creation of tort-like damages under title VII was viewed as a long shot at best, and at worst as trade bait. Title VII has always provided only make-whole relief such as lost wages and benefits or reinstatement to the job. The prospect of expanding beyond that level of damages to include such things as pain, suffering, or humiliation was not viewed by many as being a realistic possibility.

However, Mr. President, such damages are now a central part of every civil rights proposal. The recent experiences of the Thomas confirmation battle have changed the political landscape. America now is far more aware of the issue of sexual harassment and its implications than it was before we learned the name Anita Hill. In one form or another, this is an idea whose time has come. In fact, the only remaining questions appear to be whether such damages will be unlimited as to amount or capped and, to a lesser extent, whether they will be awarded by judges or juries.

The argument in support of creating the right to such expanded damages under title VII is a good one. Based on Supreme Court interpretations in the mid-1970's, the 1966 Civil Rights Act, known as section 1981, permitted racial minorities to recover monetary damages for the same types of intentional discrimination which are prohibited by title VII. Title VII provides only back pay, costs, and injunctive relief in its remedial scheme.

However, in 1989 the Supreme Court ruled in Patterson versus McLean Credit Union that section 1981 does not apply to or prohibit racial harassment and other forms of on-the-job discrimination. The rationale of the Court was that the act only prohibits acts of discrimination in the "making and formation" of contracts, which roughly amounts to hiring only. As such, the Court concluded that the act does not address conduct occurring after hiring. Under this strained interpretation of the law, once they are hired employees could be harassed, denied raises, promotions, or other benefits of employment on basis of their race, with no right to sue for damages under section 1981.

This is the current state of the law under section 1981. There is no currently existing right to seek compensatory or punitive damages for on-the-job discrimination for blacks any more than there is for women, religious minorities, or qualified persons with disabilities. In plain fact, they are all in the same boat at the present time. We have achieved parity in that no one can get damages. Only if we change the law will any such rights exist.

The reason that so much is said about the lack of parity on this issue is that everyone agrees the Patterson case was wrongly decided and must be reversed. Every civil rights proposal made over the past 1½ has included a Patterson reversal as one of its terms.

Given that we will restore the rights taken away in Patterson, and given that it is not fair, for example, to permit the recovery of humiliation damages by a black man harassed on the job because of his race and to deny that same right of recovery to a woman who is harassed on the job because of her sex, the only logical thing to do is to create the same rights for women, the disabled, and other minorities.

Such total parity with section 1981, in the form of unlimited compensatory and punitive damages, is an admirable goal. The House had the good sense to permit an up-or-down vote on a version of H.R. 1 which did not contain the caps and other limitations included in other versions. The proposal containing parity on damages was rejected by a vote of 152 ayes to 277 noes. From this substantial rejection, one must conclude that total parity with section 1981 was not a politically obtainable goal at the time of the House vote.

While the political climate may have been changed by the Thomas-Hill affair, it has not resulted in a willingness of the President to sign a bill with uncapped damages. Further, while the compromise calls for damages awarded by juries, getting the administration to give on this point was a major achievement leading to this agreement. I believe that uncapping the damages would put us over the edge in the sense of reviving the threat of a veto.

In addition to the potential of a veto, I do have other concerns about a civil rights bill with unlimited punitive damages. Punitive damages are intended to punish discriminators and to deter further discrimination. However, these beneficial purposes should not be used as an excuse to seriously impair an employer's continued economic viability or to put a company out of business. No one is served by that result. The caps which we have adopted are designed to address these concerns.

Rather than addressing the issue of damages for intentional discrimination by modifying title VII, this bill creates a new section 1981A in title 42 of the United States Code. This new section 1981A would authorize the award of compensatory and punitive damages in cases of intentional employment discrimination against persons within the protected categories of title VII and the Americans with Disabilities Act, where such persons are not able to recover damages under section 1981. Accordingly, claims for damages from such discrimination in employment against women, minorities, and qualified persons with disabilities could be addressed under this new section.

The sum of compensatory plus punitive damages which may be awarded is subject to the following limitations:

First, in the case of a respondent who has 15 or more but fewer than 101 employees $50,000;

Second, in the case of a respondent who has more than 100 and fewer than 201 employees $100,000;

Third, in the case of a respondent who has more than 200 and fewer than 501 employees $200,000; and

Fourth, in the case of a respondent who has more than 500 employees, $300,000.

If a complaining party seeks compensatory or punitive damages under S. 1745, any party may demand a trial by jury. Further, in such a trial, the court is not to inform the jury of the limitations on damages included in the law.

From the beginning, Mr. President, our effort has been to craft a civil rights bill that all the contending factions could live with. Almost by necessity, this means that none of those factions would love the result. Each would have had to have given up too much to get a bill that could become law. There is no thrill of victory here. This is as true on the issue of damages as it is for every other issue. I am convinced that the worst enemy of this good, solid legislation is the quest for perfect legislation. Perfection is not obtainable in this instance, this is the best we can do at this time. We should adopt it now—not as the end of our journey, but as one step forward on the long road to perfection.

The PRESIDING OFFICER. The Chair will inform the Senator that his time has expired.

Mr. JEFFORDS. I thank the Chair, and I am expired.

Mr. SEYMOUR addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized for 5 minutes.

Mr. SEYMOUR. Mr. President, very soon this body will pass the civil rights bill of 1991. This legislation is perhaps the most important legislation for women and minorities since the Civil Rights Act of 1964.

The civil rights bill is a compromise, Mr. President. Without compromise, there would be no civil rights bill. Indeed, without compromise this body would cease to function—its the grease that makes the congressional wheels run.

The amendment offered by the distinguished Senator from Maine and my good friend from Iowa is a compromise as well, and like all compromises, all sides can only claim partial victories.

I am a cosponsor of the original Grassley amendment. As my colleagues know, the original amendment would have allowed U.S. Senate employees to file discrimination or harassment claims in court after consideration by the ethics committee.

I still believe the original Grassley amendment was the better alternative and in fact is a compromise itself because it required an employee of the U.S. Senate to go to the ethics committee first before going to court.

The measure before us is a compromise of that original Grassley amendment. It is true that for the first time, a U.S. Senate employee will be able to go to court to seek a resolution. However, under this compromise, he or she must clear two bureaucratic, in-house hurdles to get there. Not only must an employee go through the ethics committee before a court appearance is viable, he or she must go through a newly created administrative office first.

I am going to support the compromise, but, I have to admit, without a great deal of enthusiasm.

Mr. President, Senate immunity from our Nation's civil rights laws is a cancer—a cancer of unaccountability. It is clear, like the disease itself, we cannot destroy this cancer in one quick legislative operation. We are going to have to engage in legislative chemotherapy. So I am going to support this compromise much like a cancer patient approaches their first day of treatment—it is a step toward a cure, and it certainly is better than our current procedure.

This compromise merely attacks the disease, however marginally. More legislative treatment and much more chemotherapy is needed.

I congratulate my good friend from Iowa for his efforts on this issue. It is because of this tremendous tenacity and commitment to this cause that the Senate has moved to action. And I know now, firsthand, the type of tenacity it takes to move this body, as I learned my lesson last week in moving this House to initiate investigations of the Senate Judiciary Committee leaks on the Justice Thomas and Professor Hill matter.

Why should we in the Senate be an island of immunity on these civil rights laws? After all, when we cast our votes on civil rights legislation, I presume we do so because we believe that this legislation is best able to strike at discrimination or harassment in the workplace, regardless of whether it occurs on an assembly line, in a corporate highrise, or even in this U.S. Senate.

We have heard a lot of arguments about the constitutionality, and all day long we have heard of speech and debate, as described in article I, section 6. I am, quite frankly, very impressed by the legal scholars found in the senior Senator from New Hampshire and the senior Senator from Pennsylvania as they argued. I am not an attorney, so I will not pretend to be anywhere in that league of being a legal scholar. In fact, many of my constituents in California suggest that my background, being business, maybe brings a balance to this house of lawyers. So I look at this a bit differently.

But when I just take a read of section 6 and the speech and debate clause, just an ordinary citizen reading it, I do not read into it what others seem to read. It says that we will be privileged from arrest during our attendance at the session of our House and in going to and returning from the same, and for any speech and debate in either House we shall not be questioned any other place. In other words, while we are here doing the business of the people, we have immunity.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SEYMOUR. May I request another 3 minutes?

The PRESIDING OFFICER. Does the Senator ask unanimous consent in that regard?

Mr. SEYMOUR. Yes, I do.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. FORD. Mr. President, I will advise Senators, if there is any additional time henceforth, I will object.

Mr. SEYMOUR. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator is recognized for an additional 3 minutes.

Mr. SEYMOUR. Section 6 grants us immunity while we are here doing the people's business. I have not heard anybody talk about the preceding section, section 5. Section 5 says each House may determine the rules of its proceedings. Is that not what we are doing, determining the rules of the proceedings? And in such a determination, are we not saying in this amendment, or trying the best we can, that, yes, we are going to live by the same laws that any other citizen, whether it is an individual or a corporation, what we are asking them to live with.

So, I cannot speak any more to the constitutionality than that. But I believe it is altogether constitutional and, further, I believe, more importantly, the public demands it and has a right to ask for it.

My good friend from New Hampshire was quoted in this morning's Wall Street Journal, stating that applying the civil rights laws to Congress might resemble "the days when the Crown used to regularly arrest Members of Parliament on the way to meet."

The Senator from New Hampshire's statement is an interesting one because I think this body—by continuing to fully exempt itself from civil rights laws and others—is looking very much like the House of Lords.

What is Congress afraid of? If any employee in the U.S. Senate is harassed, why can they not be guaranteed the same access to jury trials? These and other questions still remain to be resolved even with this compromise.

So I want to make it clear for the record that this Senator is very reluctantly willing to support the compromise. But it is merely one phase of treatment. This cancer of immunity must end, and I am willing to work with my colleagues in the future to apply further legislative treatment until we are cured and until we are living under the same legal umbrella and the same laws that we apply to the rest of the Nation's citizens.

Thank you, Mr. President. I yield back the remainder of my time.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator form Alaska is recognized for 3 minutes.

Mr. STEVENS. Thank you, Mr. President.

Mr. President, since 1977, rule 42—originally rule 50—of the Standing Rules of the Senate has strictly prohibited discrimination by the Senate or any office of the Senate on the basis of "race, color, religion, sex, national origin, age, or state of physical handicap."

Last year, the Senate took an action which further reinforced our prohibition against discrimination. As part of the Americans With Disabilities Act, the Senate enacted section 509 which applied four fundamental civil rights laws to Senate employees: The Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; and the ADA bill, itself.

On July 26, 1990, the day the ADA legislation was signed into law, Senator FORD, as chairman of the Rules Committee, and I sent a letter to all Senate employees reminding them of their protections against discrimination.

The ADA legislation provided for investigation and adjudication of claims to be handled by the Select Committee on Ethics—or such other entity as the Senate may designate.

Mr. President, the amendment before us has two parts. The first part, as contemplated by the ADA legislation, sets up a new entity in the Senate to handle discrimination claims. The internal adjudicatory procedures for resolving discrimination claims are to be administered by a new Senate Office of Fair Employment Practices. As ranking Republican on the Rules Committee, I participated with Chairman FORD in developing this new internal Senate process, which I believe will be an effective and fair process for the resolution of discrimination claims. And if this current amendment is brought down by the constitutional defect, it is our intention to offer that internal procedure for the Senate's consideration as we originally intended to do.

However, as I will explain in a moment, I have strong disagreements with the second part of the amendment which provides for judicial review of all decisions arrived at through the internal adjudicatory process.

The new Senate Office of Fair Employment Practices will succeed the Ethics Committee in handling discrimination claims in the Senate. While the Ethics Committee currently offers a forum for investigation and adjudication of discrimination claims, this amendment will strengthen the protection of employee rights by creating a full process dedicated specifically to discrimination claims. This process will include education, counseling, mediation, a full hearing by independent hearing officers, and a right of appeal to the Ethics Committee.

Education: The Director of the Office of Fair Employment Practices will be responsible for educating Senate offices and their employees about civil

rights protections and the availability of the OFEP to resolve potential or actual problems.

Counseling: If any employee, or any applicant for employment, believes their civil rights may have been violated, they may contact the Office within 180 days of the alleged incident. For violations alleged by employees of the Architect of the Capitol or the Capitol Police, the Director of the OFEP may at this point direct the employee's complaint, for a limited period of time, to the internal grievance procedures of the respective office. In such cases, if the employee is not satisfied with the results of the internal grievance procedures, the employee may proceed through the Senate OFEP procedures—in the same way as all other Senate employees.

During the 30-day counseling process, the Director—or a counselor from the Office—discusses with the employee what laws might be relevant to the situation, what constitutes a violation, how the adjudication process operates, and any other relevant considerations.

If the employee decides that, in his or her view, a violation has occurred, he or she would then have the right to move ahead to the mediation stage.

Mediation: The mediation stage, which lasts 30 or 60 days, involves mediation by the Office between the complainant employee and the employing office. Our intention is that many—hopefully most—of the complaints will be resolved during the mediation stage.

If the employee decides that, in his or her view, the problem has not been satisfactorily resolved, he or she would then have the right to file a formal complaint and proceed to a formal hearing.

Formal Hearing: The hearing process we establish for Senate employees is a fair and independent adjudicatory hearing conducted, to the extent possible, according to Administrative Procedure Act procedures. The fairness and independence of the hearing will be guaranteed by providing that the Director of OFEP appoint three hearing officers from outside of the Senate to hear the case. It is our intention that the Director of OFEP appoint the officers based on their knowledge of the pertinent laws, their record of integrity, and their experience in presiding over formal hearings.

Ethics Review: Following the hearing, the employee, the employing office, or the OFEP may seek review of the decision of the hearing officers by the Select Committee on Ethics, or such other review panel as the Senate may in the future decide to create. The Ethics Committee may—at its discretion—reverse, remand, or let stand the decision of the hearing board.

Judicial Review: Following the appeal to the Ethics Committee, the amendment before us provides all Senate employees with the right to seek judicial review in the U.S. Court of Appeals for the Federal Circuit. During negotiations over this amendment I had supported the right of nonlegislative employees—such as Architect of the Capitol, Superintendent, and Sergeant at Arms employees—to seek judicial review. I believe that would have been fair and appropriate.

However, I strongly oppose, as unconstitutional, the provisions of this amendment which permit employment decisions with respect to all Senate employees—including personal and policy staff—to be reviewed by the courts.

Mr. President, in setting up a tripartite Government of three equal branches, our Founders provided in article I, section 6, that with regard to Senators and Representatives, "for any Speech or Debate in either House, they shall not be questioned in any other Place." I believe the Founders placed this provision in our Constitution to preserve the fundamental independence and integrity of the legislative branch. They wanted Members of the first, and all future Congresses, to be able to speak and act freely in the performance of their legislative duties without any interference by the other two branches of Government. Their wisdom is evident: Imagine the chilling effect on our legislative deliberations if a Member's legislative activities could be questioned in court.

I believe that the decisions we make in hiring our close personal assistants and policy advisors is integral to our functioning as legislators, and is therefore protected by the speech or debate clause.

The Court of Appeals of the D.C. Circuit has agreed and I believe the Senator from New Hampshire will go into this very thoroughly.

In 1986, in Browning versus Clerk, U.S. House, the D.C. Circuit held the Clerk of the House to be immune from a discrimination suit brought by an official reporter of the House. The standard used by the court was "whether the employee's duties were directly related to the due functioning of the legislative process." In the words of the court, if the employee's duties are "such that they are directly assisting Members of Congress in the 'discharge of their functions,' personnel decisions affecting them are correspondingly legislative and shielded from judicial scrutiny."

In the same way, Mr. President, I believe that most personal, committee, and leadership staff directly assist us in the discharge of our legislative duties, and that employment decisions with respect to these employees are therefore immune from judicial scrutiny.

Let me be clear: I believe that all Senate employees are entitled to full protection from discrimination and that is why I joined with Senator FORD in the ADA legislation to apply civil rights laws to Senate employees, and why we have joined again to develop the provisions of this legislation which create a Senate Office of Fair Employment Practices. The OFEP will provide a fair and independent resolution of discrimination claims.

We did work hard on this. We have an amendment ready to offer to the Senate to establish internal procedures to carry out the requirements of the ADA Act as we passed—as we originally intended to do.

But I strongly object to the provisions of the pending amendment which permit judicial review of decisions with respect to personal, committee, and leadership staff.

In my view, the judicial review provisions—insofar as they apply to employment and selection of personal and policy staff—violate the speech or debate clause and the underlying principle of separation of powers. I believe we must protect the constitutional underpinnings of the Congress of the United States—as well as the rights of our employees—if we are to preserve the functioning of the Senate.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 3 minutes.

Mr. CHAFEE. Mr. President, I have some trouble with what we are doing tonight. There are no hearings that have been held on this amendment and there are obviously some constitutional questions. I would just like to bring one particular point to the attention of the Senate.

As I understand this legislation, a subset of gender discrimination, which is one of the matters as part of this bill, is sexual harassment. Under the procedure that has been set up under the legislation, if a female employee believes that she has been sexually harassed by a Senator, she goes through a series of procedural steps: Counseling, mediation, and then the last, the third step is formal complaint and hearing by a three-member independent hearing panel.

Now, that panel sits in judgment, and at the end of that time it will issue a written decision within 45 days of concluding the hearing. All remedies available under the referenced laws, including unlimited compensatory damages, will be available to the aggrieved Senate employee.

Let us take the situation where, indeed, the panel finds that the Senator is guilty and awards the aggrieved employee $20,000 of compensatory damages. Those compensatory damages are paid by the taxpayer.

I ask the distinguished Senator from New Hampshire if I am not correct in that?

Mr. RUDMAN. The Senator is correct, as the bill is presently written.

Mr. CHAFEE. So we have a Senator who is guilty of sexual harassment, found so by this independent panel, un-

limited compensatory damages available, all paid for by the U.S. taxpayers.

We ought to be able to do better than that, Mr. President. I objected to the Nickles amendment because there are no hearings held on it and because we really did not know what we were doing. And I think to a considerable degree that applies to this amendment before us tonight.

Perhaps it can be fixed up. Maybe it can. But certainly—certainly the taxpayers should not pay the compensatory damages that arise because of what a Senator has done.

So I bring that point to the attention of the Senate. Perhaps, as I say, an amendment will be submitted. Perhaps we can straighten this out. Here it is half past 10 at night. I wish we were proceeding in a more deliberate fashion than we are.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, I would like to pick up on the note of my distinguished colleague.

Mr. CHAFEE. Mr. President, if I have any time I will be glad to yield it.

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. CHAFEE. Thank you.

Mr. WARNER. Mr. President, I support the efforts of the distinguished majority leader, Republican leader, and others who tried to put this together. We are dealing with one of the most important things, in my brief tenure in the Senate. I wish we had more time to devote to it because I think the debate has been constructive tonight. But I want to pick up on this note that the taxpayer has to pick up the bill.

What is the alternative? I find it unsatisfactory. But what is the alternative to a Senator, married, three children, trying to get through school, maintain two residences? Does he in fact, absent some private resources, have any funds with which to pay the fine?

Mr. RUDMAN. Of course, under the way this legislation is presently constructed, the judgment would be presented to the Treasurer of the United States through the Senate disbursing office. And not only for the $20,000 award but for all reasonable attorney's fees.

Mr. WARNER. For the attorney's fees.

Mr. RUDMAN. Which, these days, seem to be somewhat unreasonable reasonable attorney's fees. So you get a bill for maybe $25,000 or $30,000 paid for by the Treasury for a sexual harassment case, a blatant case, intentional discrimination based on race.

That is fine but I do not think the taxpayers ought to pay for it.

Mr. WARNER. Mr. President, I find that unsatisfactory. What is the alternative? The Senator has no funds.

Mr. RUDMAN. I have an alternative.

Mr. WARNER. Just bear with me. The Senator has no funds. Is it fair for the employee? In fact, if you work for a Senator who simply does not have the funds—and what we have is published, given some brackets, between which you cannot figure out between the haves and have-nots—is it fair to the employees, of those who are published as a matter of record having limited funds? What are you doing to those employees?

Really, what you are saying, if you put up the amendment, to strike that provision, you are in effect saving 50 State legislatures the burden of facing term limitation. It will be a bailout around here of a wholesale nature.

Mr. RUDMAN. Something that has not been mentioned here in this debate I think probably ought to be mentioned. Up until this moment the President, the Congress, and all of the State governments, Governors and county executives and so forth, are exempt for their policymaking positions.

This repeals that.

Mr. WARNER. Can the Senator from New Hampshire be on his time? He tends to be slightly elongated on occasion.

Mr. President, it is of the utmost importance. We are up here making great speeches and great press about the taxpayers, when in fact, practically speaking, the employees have no recourse—if you strike out that and make it a personal liability—in those instances where the Senator comes here of limited means.

I should like to pose that question to my colleague. What happens to the employee of a Senator of published limited means?

Mr. CHAFEE. Well, I hardly think when we are discussing Senators of the United States, that we are talking about a deprived class.

Mr. WARNER. Mr. President, if you had a judgment of $50,000 imposed on a Senator who, together with his family is living on this salary, I question whether that Senator could have the $50,000 to pay the judgment.

Mr. CHAFEE. If he had a judgment rendered against him for any other incident, whether it was an automobile accident or a contract dispute or whatever it was, he would manage to come up with the money.

Mr. WARNER. Mr. President, I do not find that a satisfactory answer to a serious question.

Mr. CHAFEE. No; it was a question of can he pay? He ought to behave himself.

Mr. WARNER. Mr. President, let us not make a mockery out of this bill. This is serious business. We are talking about the rights of our employees, and I am saying those employees who seek employment with a Senator of limited means would have no other recourse for their——

Mr. CHAFEE. He is dealing with an individual who is on the payroll of the U.S. Government and receiving a check totaling $125,000 a year.

There is a perfect chance to withhold. I could not see a better chance to attach those wages, that salary, to get the compensatory damages that are awarded.

So I am not going to shed crocodile tears over some Senator who cannot pay a judgment that he should pay when it is found that he has sexually harassed an employee.

Mr. WARNER. Mr. President, I made my point within my time. I think we should try as best we can to fashion a bill to reach the goals of the distinguished Senator from Iowa, now joined with the majority leader and Republican leader, to solve this question, and not put forth these amendments, which I think in a less serious way will challenge the efforts by our leadership.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I want to first thank our majority leader for doing the best possible that can be done with this amendment. It has been vastly improved from its original form, and, still, is constitutionally suspect.

H.R. Mencken said one time, you have all heard that quote about, "for every complex problem there is a very simple solution, and it is wrong."

I intend to support the Grassley amendment, but I want you to know it is not with a great deal of enthusiasm. And it is not because I do not think the Members of this body ought to respond in an institutional way to the demands of the American people, that we put ourselves under some of the regulatory burdens that they are under.

But the U.S. Senate is different. The U.S. Congress is different. And the Constitution sets it out in fairly explicit language. You cannot ignore that.

I think that, really, what we ought to be doing—instead of certain, what the majority leader called transparent efforts to play politics with a very serious problem—what we ought to be doing, instead of a last minute rush on a civil rights bill to deal with this complex problem, we ought to be referring this to the Rules Committee, letting the best constitutional scholars in the country tell us, No. 1, is what we are doing constitutional or not? No. 2, how can we deal with it to meet the legitimate demands of the people of this country that Members of Congress subject themselves to some of these burdens? And tell us how we can deal with it in a constitutional way.

Eisenhower at one time said that when privilege becomes more important than principle, you will soon lose both. Rightly or wrongly, the American people believe that this is a privileged organization.

I must say in all candor and I do not mean this to be crass or derogatory

about our President, but the other day when he referred to those people over there in the privileged class, I fight traffic to get to work every morning in a little car, and I do not feel particularly privileged while I am doing it. The President walks out of the back of the White House to the strains of "Hail to the Chief" played by the Marine band, walks to a helicopter that is elegantly appointed, where he flies 20 miles to Andrews Air Force base, where a $600 million airplane awaits him with God knows how many servants and television sets and all the rest of it, and he calls us privileged. I am not being defensive about it because obviously there is a certain privilege to being in the U.S. Senate. After all, only 1,700 or 1,800 people have ever been honored enough to serve in this body.

I voted not to table the Nickles amendment. I am not particularly proud of that vote.

I thought the Senator from New Hampshire made a very compelling and persuasive speech regarding the constitutionality of it. I have always sort of prided myself on my reverence for the Constitution, but in my heart I really felt strongly that the Nickles amendment was highly suspect.

We are going to have to deal with a couple of other issues before the night is over, as I understand it, or maybe tomorrow. I take a back seat to nobody. As chairman of the Small Business Committee, I probably held more hearings on the regulatory burden that we impose on small business than any other subject to come before that committee. In the late 1970's, I fought for 3 years to get an amendment through the U.S. Senate that would shift the burden of proving the validity of regulations on the regulatory writers instead of on the taxpayers.

Right now somebody comes in and says, "Your fire extinguisher is 52 inches off the floor, and the rules say it can only be 50 inches off the floor. I hereby fine you $50." The taxpayer has to pay the $50 or he has to haul the U.S. Government to court and pay all of its attorney's fees and everything else, when Congress obviously never intended for that man to pay a $50 fine.

So my amendment, which became prominently known around here as the Bumpers amendment, would change the burden of that person, saying if you do not think this is right, you just say I am not going to pay the fine, and that puts the burden back on the Government to prove that the Congress intended that kind of a regulation. I got it passed here on time, and I must say the people on the other side of the aisle voted almost unanimously all the time. They loved it so much they put it in their platform in 1980 when Ronald Reagan ran for President. After having put it in their platform, I could not get it passed after that. Nobody seemed to like it after that.

I can tell you if you are a small businessman out there trying to comply with all these laws, it is maddening. People sometimes come to me and say, "Senator, why don't you cut all that spending?" In the last few years, I have gotten to where I used to be a little defensive about that and thought did they know what I knew. But the truth of the matter is they knew something, and it was a legitimate demand to say why do you not cut all that spending.

This past July, I offered amendments which over the next 20 years would have saved us between $200 and $300 billion, $12 billion to $14 billion next year; and 42 votes was my high water mark. Not just on defense: Space station, super collider all the rest of that junk that could at least be postponed if not scrapped totally. So when people say why do you not all eliminate some of those regulations you keep imposing on us, we ought to be listening. The truth of the matter is if we had to live with those things, we would be a lot more circumspect about what we impose on them.

Now back to where I started, Mr. President. It does seem to me that this can be dealt with in a legitimate manner and not in the last rushing hours of passing the civil rights bill.

Some thing that the amendment offered by the Senator from Oklahoma was designed to kill the civil rights bill. My good friend from Missouri who is on the floor and whose bill this is I think felt that it was a killer amendment and said so on the floor. Whether it was or not, I do not know.

As I say, it certainly was constitutionally suspect, though I showed the flag and said to my constituents at least that we hear you and we understand what you are saying. And there must be, Mr. President, an institutional response by the Congress to the people of the country, who the majority leader has said hold this place in contempt right now. And it is up to us to reinstall confidence in the American people in what we are doing here.

So I am going to vote for the Grassley amendment, even though I think it is constitutionally suspect, and hope that before the evening is over, before this bill is passed, we will refer this to the Rules Committee and let them deal with it in a sensible, timely manner.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I ask unanimous consent the Senator from Iowa be recognized for 3 minutes, and the Senator from New Hampshire be recognized for 3 minutes, and then the majority leader be recognized for 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, this has been a very serious debate, except during one or two moments when some of my colleagues have attempted to be a little funny and create a circus environment with the issue of taxpayers paying for the misjudgments of a Senator if he were involved in discrimination.

The fact of the matter is, when a Federal employee discriminates under title VII, like we will say a department head or a supervisor at the Department of HHS discriminates, and that employee is successful in pursuit of accusations against that supervisor, who do my colleagues think pays for that Federal employee who violated title VII, which is a law passed by this body to protect the civil rights of employees of the Federal Government, the taxpayers? The taxpayers of the United States pay in that instance. Who else?

So there is nothing new or different if there is an accusation successfully made against a Senator of the United States for that to be paid out of the Treasury of the United States. Do my colleagues propose that if it not be paid out of the Federal Treasury then, likewise, the Federal Government is not responsible for one of its supervisors discriminating against one of our own employees? I think not. I think they would feel legitimately that that Federal employee should be properly treated and awarded damages, and that is what this does, Mr. President.

I want to make clear that this is perfectly consistent with the way we handle like claims in the executive branch of Government and like claims before State and local government that are covered by the same title VII.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from New Hampshire.

Mr. RUDMAN. I thank the Chair.

I say to my friend from Iowa as to his last remarks, he can go back to Des Moines and make that argument, but I am sure not going to Manchester and make that argument.

If a Member of this body who employs 20, 30, 40 people is found guilty of sexual harassment or intentional discrimination and we are asking the taxpayers to pick that up because if the Secretary of HUD is sued and there is discrimination agency-wide, the Government pays, that is a distinction with a difference.

Mr. President, this is a serious vote we are about to cast. I am told that there is no chance that what I am about to do will prevail. But I implore my colleagues, look at the patent unconstitutionality on the face of this statute. Understand that the rules of the Senate have a constitutional point of order for this very purpose. Have a little courage. Be willing to face your constituents and say I agree with everything that was in this amendment except the judicial review because it is obviously against the Constitution and

you sent me to the Senate to uphold the Constitution. I cannot knowingly vote for a piece of legislation that by any reasoned judgment is unconstitutional on its face.

Mr. President, speeches generally do not change too many votes around here, but if we set this son of Frankenstein in motion, this will become law. The House is not covered. It will be signed by the President. Everyone here will be in jeopardy, and we will have done much violence to this body and to the Constitution.

Please support the motion I will make in the interest of the body and the institution, if not in our own self-interest.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I urge every Member of the Senate to oppose the point of order to be raised by the Senator from New Hampshire and to permit us to proceed to vote to approve this amendment.

First, let me make clear what our argument in support of this amendment is not. It has been said here many times tonight that we want to make the Senate the same as everyone else, that we want to treat Senators the same as everyone else, that we want to have the Senate treated the same as the private sector.

Mr. President, not a single Senator believes that. Not a single Senator wants that. The proof of that is that the greatest privilege possessed by the Senate is the immunity granted by the speech-and-debate clause of the Constitution. It is what, above all, what sets us apart from all citizens. Not a single Senator wants that.

Those who make that argument have engaged in political rhetoric. It is hot air. There is not anybody who wants to make the Senate the same as everyone else or treat the Senate the same as everyone else. If they really felt that, they would propose to eliminate the speech-and-debate provision or they themselves would voluntarily remove themselves from under its power. You do not need an amendment for that. You do not need a law for that. Every one of these Senators who tonight has stood up and said—with great rhetoric—let us be like everybody else, can simply voluntarily withdraw from that protection, give it up. Then you will be proving that you meant what you said when you said you wanted to be like everyone else.

No, this is not what this amendment seeks to do. This amendment seeks to do something that is more modest and more reasonable, and that is to provide to employees of the Senate the same protections under laws against discrimination that are provided to others in a manner that is consistent with the Constitution and that meets the separation-of-power provisions of the Constitution.

We ought not to be looking at mechanically duplicating the procedures used in the private sector. They cannot constitutionally be applied here. We ought, rather, to be asking whether we can somehow achieve the same substantive protection of law in a manner that is consistent with the Constitution. That is what this amendment tries to do.

The Senator from New Hampshire, for whom, I repeat, I have the greatest respect, concludes that it cannot be done. His conclusion is that you cannot bridge that constitutional gap. I respectfully disagree. I believe we can. I think this amendment does. And in any event, it achieves what we all ought to be achieving as opposed to all the political rhetoric we have heard tonight, and that is to provide the substantive protection of law against discrimination to employees of the Senate that are provided to other Americans. This amendment seeks to do that.

I repeat, it does not meet this phony argument that we ought to be treated just like everybody else; Main Street and Capitol Hill ought to be just the same, the private sector and the procedures here ought to be identical. It does not do that. It does not seek to do that. No one really wants to do that.

But we ought to be saying that if we believe the laws against discrimination are meaningful, have a valid purpose, and are necessary for Americans all across this country, then can we—consistent with the Constitution—provide those same protections of law to our Senate employees. I believe this amendment does it.

I ask my colleagues to support the amendment and to vote against the constitutional point of order.

I respect the difference of opinion. People of intelligence and good will have different views on the constitutionality of this provision. No one of us can know for sure, of course, until the court actually adjudicates it, which we can all be confident will occur. We are going to have a court decision on this probably at an early time. Until then, I believe we can best meet our obligations under law, our obligations to our constituents, and our obligations to the Senate by voting for this amendment and rejecting the point of order.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I am about to propound a unanimous-consent agreement which is the result of discussion with all of the Senators involved in this bill, especially the managers, and which, if approved, will permit us to have this vote imminently on the point of order to be raised by the Senator from New Hampshire and then recess until tomorrow and complete action on this bill tomorrow.

Accordingly, Mr. President, I now ask unanimous consent that upon the disposition of Senator RUDMAN's constitutional point of order, if it is defeated, Senator RUDMAN be recognized to offer a second-degree amendment to the Grassley amendment regarding Senators' personal liability; that upon disposition of the Rudman amendment, Senator NICKLES be recognized to offer a second-degree amendment to the Grassley amendment regarding jury trials and punitive damages; that upon the disposition of the Nickles amendment, Senator BROWN be recognized to offer a second-degree amendment to the Grassley amendment relevant to the Grassley amendment; that upon the disposition of the Brown amendment, the Senate without any intervening action or debate vote on the Grassley amendment, as amended; that there then be 30 minutes for debate equally divided in the usual form on each of the three second-degree amendments.

I further ask unanimous consent that if the Grassley amendment is not agreed to, Senators STEVENS and FORD may offer an additional amendment on internal Senate procedures, on which there be 30 minutes of debate equally divided and controlled in the usual form; and that Senate MCCAIN be recognized to offer an amendment relative to congressional coverage on which there be 30 minutes equally divided and controlled in the usual form.

I further ask unanimous consent that upon the disposition of the Grassley amendment the only further amendments remaining in order be the following: a Warner-Mikulski-Stevens-Wirth-Kennedy amendment dealing with compensatory damages of Federal employees and a McCain amendment dealing with the committee's report requirements, and any amendment that is agreed to by the two managers of the bill; that there then be 30 minutes remaining for debate on the bill, including the Danforth substitute, equally divided and controlled between Senators KENNEDY and HATCH; and that at the conclusion or yielding back of time on the bill, the bill be read for the third time; the Senate immediately proceed to the consideration of Calendar No. 148, H.R. 1, the House companion bill; that all after the enacting clause be stricken, the text of S. 1745, as amended, be inserted in lieu thereof; the bill be read for the third time; and the Senate proceed to vote on final passage of H.R. 1, as amended; with all of the above occurring without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Several Senators addressed the Chair.

Mr. GRASSLEY. Reserving the right to object, I have one little other matter that I need to tell the floor leader about, suggested by the clerk. I have a technical correction amendment to my amendment.

Mr. MITCHELL. Mr. President, I add to technical correcting amendment—it is a modification of Senator GRASSLEY's amendment—to the consent request which I just made.

Several Senators addressed the Chair.

Mr. RUDMAN. Reserving the right to object, I want to have a clear understanding of what is going on here. We are talking about a modification of amendment. Parliamentary inquiry. Does the Senator have a right to do that without asking unanimous consent?

Mr. DOLE. The yeas and nays have not been ordered.

The PRESIDING OFFICER. The Chair understands the request of the Senator from Iowa to be that the unanimous-consent request be amended to include his modification.

Mr. RUDMAN. I object.

The PRESIDING OFFICER. The unanimous-consent request is still pending.

Mr. RUDMAN. I will object to that part of it unless I know what it is.

Mr. CHAFEE. Mr. President, pending the discussion there, might I address a question to the majority leader? Could the majority leader inform us what the total time is involved in these measures? In other words, roughly?

Mr. MITCHELL. First let me state that if we get this agreement, it is my intention to recess after the vote on Senator RUDMAN's point of order this evening and do all of the rest of this tomorrow.

Mr. CHAFEE. I appreciate that. Are we talking 10 hours?

Mr. MITCHELL. No.

Mr. CHAFEE. We have had so many different times.

Mr. MITCHELL. I am about to respond to that now. This provides that if Senator RUDMAN's point of order is defeated, there would then be a second-degree amendment by Senator RUDMAN, a second-degree amendment by Senator NICKLES, and an amendment by Senator BROWN, which is not specified, each of which would be subject to a 30-minute time limitation equally divided. Then there are a couple of other amendments which I understand are going to be accepted. Then there would be 30 minutes of debate on the bill itself and a vote on final passage. So we are talking about three amendments of 30 minutes each, plus a vote, and then 30 minutes and final passage.

Mr. President, let me finish with the Senator from Rhode Island. If the Grassley amendment is not agreed to, Senator STEVENS has reserved the right, and Senator FORD, that they may offer an additional amendment on internal Senate procedures which would be 30 minutes.

Mr. CHAFEE. I thank the majority leader.

The PRESIDING OFFICER. Is there objection to the request made by the majority leader?

Mr. DOLE addressed the Chair.

Mr. RUDMAN. I simply want to advise the majority leader that I have now been informed of the nature of the modification and I will not object.

Mr. MITCHELL. I modify the unanimous-consent request in the following respects. I read the following sentence which I will now ask to be deleted and that sentence was "and that Senator MCCAIN be recognized to offer an amendment relative to congressional coverage on which there be 30 minutes equally divided and controlled in the usual form." I am now advised that will not be necessary. I ask that be deleted from my request.

I further ask that the following language which I read also be deleted. This is in the very last paragraph, the following words, "the Senate, immediately proceed to the consideration of Calendar No. 148, H.R. 1, the House companion bill; that all after the enacting clause be stricken, the text of S. 1745, as amended, be inserted in lieu thereof, the bill be read for the third time." I ask that that language be removed from the request.

Further, that in the clause immediately following that clause which I have just requested be deleted, the words "H.R. 1" be deleted and there be substituted therefor "S. 1745".

Finally, Mr. President, that with respect to the two amendments to which I referred earlier in my request, that is one being a Warner-Mikulski-Stevens-Wirth-Kennedy amendment, and the other being a McCain amendment, dealing with committees reporting crime, that those be subject to 20-minute time limitations equally divided and controlled in the usual form.

The PRESIDING OFFICER. Is there objection to the request made by the majority leader?

Mr. DOLE. Mr. President, does that cover the technical amendment of the Senator from Iowa? He can modify his amendment now if he wishes.

Mr. MITCHELL. Yes. Mr. President, I request that my proposal I made be amended to include the request of the Senator from Iowa.

Mr. DOLE. But he can modify his amendment now. The yeas and nays have not been ordered. Just send the modification.

Mr. GRASSLEY. If the Senator will yield, I will do it right now.

MODIFICATION OF GRASSLEY AMENDMENT NO 1287

Mr. GRASSLEY. Mr. President, I send to the desk a modification to my amendment.

The PRESIDING OFFICER. The Senator has the right under the rules. The Senator's amendment is so modified.

The amendment (No. 1287) as modified, is as follows:

I ask unanimous consent that the Grassley Amendment No. 1287 be modified by striking lines 1 through 4 on page 1, and by striking lines 8 through 12 on page 30.

The PRESIDING OFFICER. If there is no objection to the request made by the majority leader, the request is agreed to.

The text of the agreement follows:

Ordered, That, on Wednesday, October 30, 1991, when the Senate resumes consideration of S. 1745, the Civil Rights Bill, the Senator from New Hampshire (Mr. Rudman) be recognized to offer a second degree amendment to amendment No. 1287, concerning Senators' Personal Liability, and that there be 30 minutes of debate on the amendment, equally divided and controlled in the usual form.

Ordered further, That upon disposition of the Rudman amendment, the Senator from Oklahoma (Mr. Nickles) be recognized to offer a second degree amendment to amendment No. 1287, concerning Jury Trials and Punitive Damages, and that there be 30 minutes of debate on the amendment, equally divided and controlled in the usual form.

Ordered further, That upon disposition of the Nickles amendment, the Senator from Colorado (Mr. Brown) be recognized to offer a relevant second degree amendment to amendment No. 1287, and that there be 30 minutes of debate on the amendment, equally divided and controlled in the usual form.

Ordered further, That upon disposition of the Brown amendment, the Senate, without intervening action or debate, vote on amendment No. 1287, as amended, if amended.

Ordered further, That, if amendment No. 1287 is not agreed to, the Senator from Alaska (Mr. Stevens) and the Senator from Kentucky (Mr. Ford) are authorized to offer an additional amendment on internal Senate procedures, and that there be 30 minutes of debate on the amendment, equally divided and controlled in the usual form.

Ordered further, That upon disposition of amendment No. 1287, the only amendments in order be the following:

Warner, et. al.—Compensatory damages for Federal Employees.

Warner—Prospective application.

Kennedy—2nd degree to Prospective application.

McCain—Committee reporting requirements.

Managers—Amendments agreed to by the Managers.

Ordered further, That debate on the above listed amendments, other than amendments agreed to by the Managers, be limited to 20 minutes, equally divided and controlled in the usual form.

Ordered further, That there be 30 minutes of debate remaining on the bill, including amendment No. 1274, equally divided and controlled by the Senator from Massachusetts (Mr. Kennedy) and the Senator from Utah (Mr. Hatch). That when time is used or yielded back, the bill be read a third time, and the Senate, without intervening action or debate, vote on passage of the bill, as amended, if amended.

Mr. DOLE. This will be the last vote?

Mr. MITCHELL. This will be the last vote this evening. It is my intention that the Senate will reconvene at 10:30 in the morning and be back on the bill at 11, which means that there could be a vote at about 11:30. That will give us an opportunity to get a decent night's sleep and reflect on the action that we will take tomorrow.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I thank the Chair.

Mr. President, I make the constitutional point of order against the Grass-

ley-Mitchell amendment on the grounds that the amendment proposes an unconstitutional intrusion into the affairs of the executive and legislative branches.

Mr. BYRD. Mr. President, may we have order so we know what we are voting on? This is supposed to be a constitutional point of order. I think the Senators want to know what we are voting on.

The PRESIDING OFFICER. The Senate will be in order.

Mr. RUDMAN. I thank the President pro tempore. I will restate my motion.

I make a constitutional point of order against the Grassley-Mitchell amendment on the grounds that the amendment proposes an unconstitutional intrusion into the affairs of the executive and legislative branches, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Chair has no authority to rule on the points of order raised under the Constitution. The Chair therefore under the precedents submits the question to the Senate.

Is the point of order well taken? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] and the Senator from Pennsylvania [Mr. WOFFORD], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 22, nays 76, as follows:

[Rollcall Vote No. 235 Leg.]

YEAS—22

Biden	Gramm	Mack
Byrd	Hatch	Nunn
Cochran	Hatfield	Rudman
Cohen	Heflin	Simpson
Danforth	Hollings	Stevens
Domenici	Johnston	Thurmond
Garn	Lott	
Gorton	Lugar	

NAYS—76

Adams	Dodd	McCain
Akaka	Dole	McConnell
Baucus	Durenberger	Metzenbaum
Bentsen	Exon	Mikulski
Bingaman	Ford	Mitchell
Bond	Fowler	Moynihan
Boren	Glenn	Murkowski
Bradley	Gore	Nickles
Breaux	Graham	Packwood
Brown	Grassley	Pell
Bryan	Harkin	Pressler
Bumpers	Helms	Pryor
Burdick	Inouye	Reid
Burns	Jeffords	Riegle
Chafee	Kassebaum	Robb
Coats	Kasten	Rockefeller
Conrad	Kennedy	Roth
Craig	Kerry	Sanford
Cranston	Kohl	Sarbanes
D'Amato	Lautenberg	Sasser
Daschle	Leahy	Seymour
DeConcini	Levin	Shelby
Dixon	Lieberman	Simon
Smith	Wallop	Wirth
Specter	Warner	
Symms	Wellstone	

NOT VOTING—2

Kerrey	Wofford

So, on the decision of the Senate, the point of order was not sustained.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I rise in support of the amendment offered by my friends and colleagues, Senator DANFORTH and Senator KENNEDY, and I commend them for their tireless, and often frustrating, work over the past several months on behalf of the working men and women of our country.

Although the compromise falls far short of assuring all victims of job discrimination the right to fair and equal treatment under the law, it nonetheless marks an important milestone: The President has finally found the courage and the wisdom to lay aside rhetoric and join the Congress in taking constructive action. He has finally acknowledged that this is not, in any way, shape, or form, a quota bill and has agreed, finally, to sign this important civil rights bill into law. This is real progress—not as much as many of us would like, but it is a significant step in the ongoing struggle to remove barriers to equal employment opportunity for all.

Our distinguished colleagues, led by the Senator from Missouri, Senator DANFORTH, have worked long and hard on this compromise. They have, I believe, responded to every legitimate objection raised to a civil rights bill. They have crafted a bill that removes any reasonable doubt about quotas. As the administration urged last year, the language of S. 1745 clearly reflects Griggs versus Duke Power Co., the prevailing interpretation of civil rights law for 17 years, until the Supreme Court's 1989 decisions.

I am pleased that this compromise will put to rest once and for all allegations that this is a quota bill. Those allegations, which we heard repeatedly during the past year, have done an incredible disservice to the millions of women and minorities who stand to gain the fundamental right of equality through passage of this legislation. Not one Member of the Senate supports quotas. I certainly do not. I firmly believe that merit, not race or sex, should determine who is hired for a job. And through the tireless efforts of Senator DANFORTH and others, S. 1745 makes clear that quotas are not advocated, mandated, or intended.

Mr. President, we solved the quota issue, but a serious problem of simple equality remains to be addressed. Because of the compromise agreement with the White House, however, the Senate cannot effectively deal with this inequity until we first pass S. 1745. Until the enactment of this bill, we cannot address legislation to remove arbitrary limits, both statutory and court-imposed, on legal remedies available to victims of sex-based, religion-based, and disability-based job discrimination.

I fervently wish that arbitrary damage award limits, which the President insisted be part of the compromise, were not part of this bill. I wish that we had the courage to accept the commonsense amendment to eliminate the damage limits proposed last week by my good friend, Senator WIRTH, along with Senator MIKULSKI, Senator DURENBERGER, myself, and others. But we do not. Instead, at the insistence of the President, we are going to pass a bill that, to a limited degree, intentionally perpetuates discrimination against women, religious minorities, and the disabled.

To ensure that the President will not veto the other, enormously important provisions of this civil rights bill, we find ourselves stuck with an arbitrary four-tier cap on the damage awards available to victims to sex discrimination. It is true that the capped damages provide more monetary relief than victims of sex discrimination can currently receive. But the fact that existing law is less than fair does not justify perpetuating a limitation, particularly when victims of other forms of job discrimination are entitled to much broader relief.

Under current law, victims of race-based job discrimination may collect compensatory and punitive damages without limit. Victims of discrimination based on sex, religion, or disability are entitled only to receive back pay, reinstatement, and declaratory or injunctive relief—all of which are little comfort to someone who has suffered the trauma and humiliation of sexual harassment or discrimination based on their religion or disability.

The Danforth-Kennedy compromise, with its four-tier damage award scheme, partially addresses these currently conflicting laws. The problem is that it simply does not go far enough. No Member of this body should be satisfied until the damage award limit is repealed and women are no longer treated as second-class citizens. I can assure you that the women of this country will not be satisfied.

Mr. President, this is a bittersweet day in the Senate: To reclaim part of the ground lost by the recent Supreme Court decisions and ensure enactment of this legislation, we have had to agree to continue with discriminatory treatment of many in our country. I fervently hope that before the 102d Congress adjourns, we can pass legislation to cure this injustice. I pledge my best efforts to do just that. Thank you.

Mr. BREAUX. Mr. President, I rise today to discuss two very important issues included in this legislation. First, I strongly believe that Congress should be subject to the same civil rights laws that it subjects the rest of the country to. Second, I wish to comment on the very difficult situation in which the Congress now finds itself. On the plus side, after 2 years of divisiveness and partisan politics, it looks as though the Congress and the administration have finally agreed to a bill that can be enacted into law to restore civil rights gains achieved before 1989. On the minus side, the bill keeps intact disparities in the law for different forms of discrimination.

Under an 1866 law known as section 1981, racial minorities have long had the ability to sue for punitive and compensatory damages. These damages are not capped and never have been.

Under title VII of the Civil Rights Act of 1964, which covers discrimination on the basis of gender, ethnicity, and religion, as well as race, an individual who has been discriminated against has no ability to collect punitive and compensatory damages—only injunctive relief, back pay, and reinstatement.

The different remedies available under these two laws lead to obvious inequities. The most glaring inequity is the treatment given sex discrimination in the workplace. The unfortunate fact is that different standards have existed for as long as these two laws have existed.

The compromise bill we will be voting on greatly improves the playing field but maintains separate standards. Why? Since 1989, the Congress has attempted to pass civil rights legislation. The President vetoed the first bill passed by Congress, the Civil Rights Act of 1990. Congress, without sufficient votes to override this veto, finds itself forced to craft a bill that will be acceptable to the White House and is left with little room to go further.

Now, the prospects are good for passing a bill that will substantially return civil rights law to its pre-1989 status, plus provide increased remedies for sex discrimination. The White House, however, has made it clear that the price for its support of the compromise is acceptance of a set of caps on damages under title VII. Does the White House believe that gender discrimination is not as serious as racial discrimination? I do not know. Do I believe that gender discrimination is any less important? Absolutely not. Discrimination is wrong and strong laws are needed to prevent it, whatever the basis.

The Congress must now face an extremely difficult choice. Does it pass a civil rights bill that condones an uneven playing field—improved though it may be? Or, in the face of Presidential opposition, does it do nothing?

If Congress does nothing and allows the series of Supreme Court decisions that came down in 1989 to stand, we accept the reversal of longstanding gains in civil rights. These gains affect every kind of minority—women and racial minorities alike.

If we do something, and pass this bill, we restore the basis for civil rights law to its pre-Wards Cove strength, which is critical for women, for racial minorities, and any other class of plaintiff. And we will at least take the first steps toward improving the remedies that are available to all minority groups under title VII, including victims of sex discrimination.

This bill will allow damages for women who are discriminated against up to $300,000, not including back pay, reinstatement, nor out-of-pocket expenses. Without this bill, none of this would be allowed under current law.

In the belief that it is better to accomplish something rather than nothing, I feel that this certainly represents a step in the right direction and I will support the bill.

On a final note, I believe that it is the height of arrogance for Congress to pass laws, such as civil rights laws, and then exempt itself from those laws. I wholeheartedly support an amendment to make the Congress and the executive office subject to the same laws that Congress imposes on its citizens, and I hope that we can pass such a provision as part of this bill.

I thank the Chair for the opportunity to speak, and I yield the floor.

Mr. DASCHLE. Mr. President, I have been thinking about the situation in which we find ourselves with respect to civil rights legislation in this country, and what words I might find to express my thoughts and feelings on how we got to this point.

Last Friday, in a reversal of direction reminiscent of a famous football coach's exhortation to run to daylight, President Bush announced that he had reached an agreement with Senate leaders on civil rights legislation that sets "a new standard against discrimination" but "does not resort to quotas." That pronouncement effectively ended a nearly 2-year political dispute over how—not whether—to overturn a series of Supreme Court decisions that made it harder for workers to win job discrimination cases.

The President is back on the high road, but his embrace of the compromise cannot erase the stain left on the soul of the Nation. Regrettably, the 2-year debate over the Civil Rights Act has been about more than how to prevent job discrimination without penalizing employers unfairly. It has been part of a broader national morality play that the American people have seen acted out before their eyes since Willie Horton seared an indelible impression on the national consciousness during the 1988 Presidential campaign.

Politicians jockey for political advantage by putting their own spin on terms such as "affirmative action" and "quotas." The highly politicized hearings on the nomination of Clarence Thomas to the Supreme Court explode in acrimony and hypocrisy after sexual harassment charges are leaked to the press. A former Klansman and American Nazi leader emerges as a contender for Governor in the Deep South.

What do these developments say about the country's elected leaders and the evolution of the national character?

My reaction has been one of confusion, disappointment, anger, and disbelief. My concern is for the millions of Americans across this country who must bear the sting of discrimination in the workplace as national politicians extemporize for partisan political gain. I also feel for the individual businesspeople around the country who are struggling to make ends meet while caught in the teeth of a stagnating economy. Unsure whose rhetoric to believe and alarmed by the horror stories about the potential effect of a quota bill, they understandably find it prudent to dig in and oppose the Civil Rights Act of 1991.

It is not easy to put all these thoughts and feelings into words. But last Thursday our colleague from Maine, Mr. COHEN, did just that. I call attention to the eloquent statement of Senator COHEN, who happens to be a Republican, not to embarrass the White House, but to share with any of my colleagues who may have missed the statement, the undeniable truth of its contents.

I will quote two early paragraphs, which are especially powerful, and will ask unanimous consent that the full text of Senator COHEN's speech be printed at the close of my remarks.

In addressing the charge that the Civil Rights Act is a quota bill, Senator COHEN muses as follows:

> It seems to me that it is back to the future in American politics today. Although the calendar may say 1991, the times are starting to remind me somewhat of George Orwell's "1984," where we are told love is hate, war is peace, ignorance is wisdom, and 2 plus 2 equals 5 or 6 or 7 whatever our deepest fear demands.
>
> Orwell warned us that the debasement of language will lead inevitably to the corrosion and corruption of values. And I believe that is exactly what we are seeing in the debate over civil rights today.

As Orwell warned in 1984, Senator COHEN goes on to warn those who have

done everything possible to incite partisan, racial, and sexual divisiveness over the Civil Rights Act of 1991 that they are playing politics over the wrong issue. That any short-term political gain the Republican media consultants may achieve as a result of their all-out assault on the truth could lead to long-term disaster. His remarks are not only courageous; they serve as a critical reminder to all of us who are jaded by our experiences with 30-second TV attack ads that truth and human values are more important than the tainted benefits we receive from clever manipulation. I urge all of my colleagues to read Senator COHEN's speech.

Mr. President, the fact that agreement on a compromise civil rights bill appears to have been reached at the 11th hour does not detract from either the truth or power of Senator COHEN's remarks. Its underlying message merits serious reflection.

In our representative democracy, the people choose those they trust to lead. But leadership requires more than an ability to garner votes. Winning 1 election, or 2, or 10, does not, in and of itself, make one a legitimate leader. Real leadership speaks to the best in each of us and moves us forward. It does not appeal to our faults and fears to hold us back.

It is incumbent upon those of us entrusted with power to accept the responsibility that comes with leadership. In the area of civil rights legislation, I am deeply concerned that the American people have been provided little leadership of late. In fact, they have been misled. Cynical politicians have abused their power and deliberately misled the public to prevent civil rights legislation from moving forward.

What is wrong with restoring the civil rights protections Americans had in 1989? What is wrong with recognizing the rights of women, religious minorities, and the disabled who are the victims of sexual harassment and other forms of discrimination to some compensatory and punitive damages?

It had been suggested that opposition to the bill had been based on the fact that the President and other Republicans would lose what they believe is a valuable campaign tool if this issue is resolved. It is now suggested that the President's change of heart is somehow connected to the fallout from the Thomas hearings and a former Klansman from Louisiana's embrace of the Republican party.

Mr. President, that is not leadership.

Those of us in this body are now called up to lead this country in a direction that protects the rights of all Americans. To sort out the truth from among the many wild mischaracterizations that have been used in public discourse on this issue and pursue the proper policy. The Civil Rights Act of 1991 is a small, but important step toward that goal.

Why is it needed?

The Wards Cove ruling in 1989 made it easier for employers to justify employment practices as "being required by business necessity." It has been documented how this new standard has made it more difficult for minorities and women to contest what they believe to be discrimination in the workplace. We should not turn back the clock on those who suffer discrimination.

One aspect of the legislation that has received less attention is the civil rights relief the bill offers working women, who, under current law, are essentially second-class citizens.

In recent weeks, public awareness of sexual harassment and its impact on women has been raised. Sexual harassment is one of the most insidious and widespread forms of discrimination. Virtually every Member of the male-dominated Senate has proclaimed his or her abhorrence of sexual harassment and his or her commitment to combating it. But what few people understand is that, under current law, women are denied compensatory and punitive damages for proven, intentional sexual harassment.

It should be no wonder that many women decline to file formal sexual harassment charges. Under current law, they have little to gain from such a decision even if they are able to prove a charge that, because of the very nature of sexual harassment, is extremely difficult to prove.

The extent of this problem will be a surprise to many Americans. According to a 1987 study of Federal employees, 42 percent of all women reported that they experienced some form of workplace harassment between 1985 and 1987.

As we have learned in recent weeks, sexual harassment exacts a heavy toll on its victims. But current law does not fairly compensate harassment victims. They may get their jobs back, or they may receive back pay, and they may obtain a court order against future discriminatory or harassing conduct. But they cannot obtain compensation for their medical expenses, emotional distress, and other losses. Meanwhile, victims of racial discrimination can recover these losses, as well as punitive damages. A woman who is the victim of sexual discrimination or harassment does not have this right. That situation is not fair.

How frustrating and demoralizing it must be for a victim of harassment to suffer this trauma in her life, only to learn, after a lawsuit that may take months or even years, that she is entitled to little or nothing for her losses, even if the court finds that her rights have been violated. Look at what happened to women who brought claims of sexual harassment and discrimination against their employers:

One woman was severely, sexually, and racially harassed on the job until she finally quit after her supervisor showed her sexually explicit photographs and threatened her life. She fell down a flight of stairs trying to escape him and subsequently suffered a severe depression. The court found that her rights were violated, but because of the limitations in the current law she received no compensation at all for her medical injuries.

A fire dispatcher endured "extreme and ongoing sexual harassment" including unwanted sexual touching by her coworkers and being told by her supervisor that what she really needed was to be raped in the bushes. But she received no relief under current law.

A police officer experienced severe anxiety, depression, and stroke-level high blood pressure as the result of a campaign of harassment by her fellow officers and supervisors but received nothing for her injuries, even though the court found she had suffered severe discrimination.

Congress has been trying to correct this injustice for 2 years. The Civil Rights Act of 1990 provided for damages, but it was vetoed by President Bush, and the attempt to override the veto failed by one vote. Like the 1990 bill, the Civil Rights Act of 1991 would enable all victims of intentional workplace discrimination, including women, to recover compensatory and, in some cases, punitive damages.

By providing these damages for intentional sexual discrimination and harassment, the compromise bill makes the first step toward fair treatment of women under antidiscrimination law. But it falls short of the ultimate goal by capping these damages—a provision upon which the President insisted. For women to enjoy the full benefits of Federal protection against sexual discrimination and harassment, these caps should be removed, and it is likely that this issue will be revisited in subsequent legislation. We cannot say women will receive justice until we treat women fairly under this law.

The 1991 Civil Rights Act will provide protections against job discrimination for all Americans. It will ensure that employees are hired on the basis of merit, on their ability to perform the job, not on their gender, age or physical traits. It will ensure that women will have basic protection against sexual harassment and a remedy when they are victims of such discrimination.

Last Friday, President Bush joined this battle by endorsing a modified version of the Civil Rights Act of 1991 which he proclaimed is not a quota bill. This legislation reverses six Supreme Court decisions that made it more difficult for plaintiffs to win job discrimination lawsuits and allows women, religious minorities and the disabled to sue for and win compensatory and pu-

nitive damages for intentional discrimination. I hope that this compromise will be enacted into law without further delay and that the lessons of the political posturing and sparring that characterized the 2-year debate on this legislation will not be lost on lawmakers or the American people. It is time to move forward.

I ask unanimous consent that the remarks to which I earlier referred be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE CIVIL RIGHTS ACT OF 1991

• Mr. COHEN. Madam President, the bill that we are considering has been labeled a "quota bill." And it has been given the White household stamp of disapproval.

It seems to me that it is back to the future in American politics today. Although the calendar may say 1991, the times are starting to remind me somewhat of George Orwell's "1984," where we are told love is hate, war is peace, ignorance is wisdom, and 2 plus 2 equals 5 or 6 or 7 or whatever our deepest fear demands.

Orwell warned us that the debasement of language will lead inevitably to the corrosion and corruption of values. And I believe that is exactly what we are seeing in the debate over civil rights today.

In the corridors and back rooms of Capitol Hill, civil rights legislation is whispered to be a politically defining issue, a so-called wedge issue that can be used to drive middle-class white voters further into the arms of the Republican Party, leaving blacks, feminists, labor unions, and vacuous liberals in the backwash of the Democratic Party.

Now it may be, as this cynical thesis might have it, that this wedge is a politically powerful and popular force that is going to repel the segments of our society into clearly defined magnetic fields.

This wedge may even be the key to political victory for the balance of this century and beyond—if you believe that winning means never having to say you're sorry.

But I believe the short-term political success is going to prove to be a long-term public policy disaster. Political success for a party and for our country ought to mean something more than he who dies holding the most votes. Just as wealth has to mean more than the number of dollars in one's bank account or the number of cars in one's garage.

When we speak of politics, we must speak of philosophy. And philosophy means the love or pursuit of wisdom and the understanding of human values.

And that is what is truly at stake here—not wedges, but values.

There are two—at least two—basic values that lie deep within the hearts and minds of the American people.

One is that every person should be given a fair chance to compete—in the classroom, on the athletic fields, and in the workplace. Every person under our Constitution should enjoy equal privileges and equal protection of the law.

The second major value—there should be no special privileges. No favoritism. No artificial or arbitrary rules that give something that has not been earned. No quotas, which are a rule of thumb and not a rule of reason.

In an ideal world, these values are not in conflict. They are complementary. They are in harmony.

But suppose the world is less than ideal. Suppose that all the people in this country are not treated equally and have not been treated equally over a long period of time. Suppose there are laws passed or practices established that discriminate against people because of their race or sex.

Suppose people are treated as slaves, pack mules, objects of hatred and violence, or simply as reproductive vessels.

Suppose people cannot buy a home or obtain a mortgage or get a job because of the color of their skin or break through that so-called glass ceiling at the workplace because of their gender.

Is there anything more un-American than to deny a human being the chance to be the best that he or she can be, as the Army says, on equal terms?

Is there anything more un-American than to isolate people in a ghetto, put up invisible barriers by denying them jobs, opportunity, and any hope of breaking out of their prison of poverty? And then sit back and watch in horror and outrage as their children go fatherless and their streets go white with drugs and then run red with the blood from mindless violence?

Is there anything more un-American than to rob people of their equal opportunity because of the pigment in their skin, the texture of their hair, the composition of their chromosomes—all the while we sit back and proudly proclaim that our policies have to be colorblind and gender neutral?

Is there anything more hypocritical than to say that racism or sexism is a thing of the past?

Madam President, in "Native Son," Richard Wright told a story of what it means to be black in this country. There are many memorable scenes in the book, but there is one that has stayed with me over the years. In it, two young boys, Bigger and Gus, look up at a pilot who is skywriting on a lazy summer day:

"Looks like a little bird," Bigger breathed with childlike wonder.

"Them white boys sure can fly," Gus said.

"Yeah," Bigger said wistfully. "They get a chance to do everything. I could fly a plane if I had a chance."

"If you wasn't black and if you had some money and if they'd let you go to that aviation school, you could fly a plane," Gus said.

And then there is Bigger contemplating a life filled with denial and rejection, and he responds:

> Every time I think about it, I feel like somebody's poking a red-hot iron down my throat * * * It's just like living in jail. Half the time I feel I'm on the outside of the world peeping in through a knothole in the fence. * * *

That scene was memorable for me not just because it depicts a scene of innocence and whimsey perhaps in a novel filled with horror, but because it said so much about the human spirit, about the significance of hope, about the utter destructiveness of knowing in advance that the hope can never be realized.

Now, "Native Son" is fiction and it was written 50 years ago. We've made great progress since then. Michael Jordan is now skywriting in Chicago, Michael Jackson walks on the Moon, TV watchers can start their day with Bryant Gumbel or Oprah Winfrey and end it with Bill Cosby or Arsenio Hall, and Clarence Thomas sits on the Supreme Court.

There has been progress. But for every Jordan, Jackson, Gumbel, Winfrey, Cosby, Hall, or Thomas, there are millions of people treated with contempt and disdain and discrimination every single day and moment of their lives.

For every Sandra Day O'Connor or Katherine Graham, there are millions of women who run smack into harassment or invisible walls that restrict the achievement of their potential.

Recently, I watched a segment of "Prime Time" on ABC. The producers of the show took two attractive, articulate male college graduates—one white, one black—and sent them out into the world followed by a hidden camera.

You can probably guess the results of that foray into the world's experiences. The young white man was treated almost systematically with courtesy and enthusiasm and accommodation, with financial incentives to make purchases.

How was the black man treated? In a store, he was regarded with great suspicion by a salesman and followed by a security guard. He went to one auto dealership—the same dealership that his counterpart had gone to earlier—where he was thoroughly ignored. At another dealership, he went in to ask about purchasing a car and was given a higher interest rate than his counterpart. He went to look for an apartment and was told that the last apartment had just been leased, even though, of course, we all know that it hadn't been leased.

The camera never blinked. Nor did any of the unwitting participants in the film. They either denied that they had engaged in acts of racism or dis-

crimination, or they reacted with anger to the exposure of their behavior.

And still, there are those who want to make the term "civil rights" a pejorative phrase, and use it to achieve political success on the backs of those who have been victimized by society for hundreds of years.

Justice Holmes once wrote that the hell of the old world's literature involved people being taxed beyond their abilities. We can recall all of the various myths where the individuals had their fate written well in advance. It was all preordained, and they struggled against overwhelming odds and inevitably failed.

But Holmes said there was a different type of hell in today's literature and today's life. He said a far deeper abyss existed and that's when powers conscious of themselves are denied their chance. And that, it seems to me, is at the core of what we're debating today.

The hell of millions of Americans that they must endure every day of their lives, knowing that they have the intelligence and the ability, and they're being denied their chance.

Madam President, opponents of this legislation can jump up and say they agree. Intentional discrimination is a violation of every sense of decency, every principle that we hold dear. But they would then argue this legislation goes beyond intentional discrimination—and indeed it does. They would argue it dictates employment practices and standards and is going to force employers to hire unqualified people or undesirables in order to avoid a lawsuit. And so they put the quota label on the bill.

Madam President, what this legislation does is it talks about burden of proof—the allocation of burden of proof. Who should bear the burden of proving that an employer's hiring or promotional activities result in excluding women or minorities from entering that work force or progressing within it.

Congress passed laws, which the courts determined placed the burden on those who could show that their standards or practices were driven by business necessity rather than any racial or sexual bias or discriminatory practice. And from 1971 to 1989 there seemed to be no cry of quotas. No one said this jeopardized the entire American ethic because of quotas.

But then in 1989, the nonactivist Supreme Court discarded precedent and shifted the burden to those who chose and do choose to complain.

What we are doing in this legislation, we are saying to the court and to the country, "No. The burden belongs on those who claim, "the business makes me do it."

Madam President, this legislation, so meticulously and laboriously crafted by my diligent and thoughtful colleague JACK DANFORTH, is important for what it does. But it is also important for the message that it sends. The pursuit of the American ideal or dream is as important today as it was on the day that our Constitution was drafted.

There are others who have spoken far more eloquently than I can ever possibly hope to do. There is one voice I recall reading, that of Robert G. Ingersoll, who was talking about the issue of racism in our society. He said:

> Liberty is not a social question. Civil equality is not social equality. We are equal only in rights. No two persons are of equal weight, or height. There are no two leaves in all the forests of the earth alike—no two blades of grass—no two grains of sand—no two hairs. Neither mental nor physical equality can be created by law, but law recognizes the fact that all men have been clothed with equal rights by nature, the Mother of us all.

And then he went on to say:

> The man who hates the black man because he is black has the same spirit as he who hates the poor man because he is poor. It is the spirit of caste. The proud useless despises the honest useful. The parasite idleness scorns the great oak of labor on which it feeds, and that lifts it to the light.
>
> I am the inferior of any man whose rights I trample under foot. Men are not superior by reason of the accident of race or color—

And let me here add the words "or sex."

Madam President, to oppose this legislation is to reaffirm the condemnation of those millions of Americans who conscious of their powers are being denied their chance.

I cited Justice Holmes a moment ago, and let me close with another of his observations.

He said that a catchword can hold analysis in fetters for 50 years and more. A label can attach similar chains to our minds. I would hope that my colleagues would reject the label, tear off the label, to study the contents and, more importantly, study what has been done to the lives of so many of our citizens.

And I hope that they will conclude that fairness demands that they support this legislation.

Madam President, I suggest the absence of a quorum.●

Mr. HEFLIN. Mr. President, I rise today to express my support for the substitute version of S. 1745, the Civil Rights Act of 1991. This legislation, sponsored by Senator JOHN DANFORTH, represents nearly 2 years of bipartisan effort to resolve the problem of legal redress toward discrimination in the work force.

The final compromise on S. 1745 would reverse five 1989 Supreme Court decisions limiting employee recourse for job discrimination. It would also reverse a 1991 Supreme Court ruling by allowing American workers abroad to sue their U.S.-based employers for discrimination. In addition, S. 1745 would allow women, religious minorities, and the disabled to obtain money damages for acts of intentional discrimination.

Specifically, the compromise bill reinstates the Supreme Court's 1971 ruling in Griggs versus Duke Power Co., which held that employers must prove a business necessity for practices that adversely affect women and minorities. S. 1745 returns to the employer the burden of justifying employment practices that are seemingly fair but have an adverse impact on those groups, leaving to the courts the task of deciding what constitutes a business necessity. This provision is significant because there was much concern that the bill's previous definitions of business necessity would have forced companies to adopt numerical hiring and promotion quotas rather than risk lawsuits.

Furthermore, S. 1745 would amend title VII of the Civil Rights Act of 1964 to set limits on compensatory and punitive damages for women, minorities, and the disabled, and to allow jury trials for victims of sexual bias. This legislation would also bar racial harassment and other forms of bias that occur after a person is hired. Regarding consent decrees, the bill would define rules under which third parties could challenge a consent decree in an antidiscrimination case.

S. 1745 goes on to make clear that an employer may not make an employment decision based on race, color, religion, sex, or national origin, regardless of whether other factors also motivated the decision. In addition, the bill would permit workers challenging a potentially discriminatory seniority system to wait until the adverse impact on the system is felt to bring a lawsuit. Finally, S. 1745 would bar the adjustment of test scores by racial or other classifications.

Mr. President, the S. 1745 compromise does not promote quotas and is supported by the administration. Of equal importance is the fact that it is fair to the business community. For all of the reasons I have stated, I support this legislation and move for its immediate passage.

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that we now proceed to morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NATIONAL SCHOOL LUNCH PROGRAM

Mr. DOLE. Mr. President, on October 16, 1991, the distinguished chairman of the Agriculture Committee, Senator LEAHY, made a statement on the floor regarding the National School Lunch Program. I agree with the senior Senator from Vermont that healthy children are the foundation of a healthy nation, and that the National School Lunch Program is a vital investment in the future of all our children. How-

ever, I believe his statement was unduly critical of the job both the U.S. Department of Agriculture and school food service workers are doing, and I would like to offer my own perspective on some of the points he made.

USDA does have a responsibility to improve the meals served to schoolchildren, as Senator LEAHY indicated. However, his statement makes it sound as if the Department is dragging its feet on implementing congressional directives. The Department is doing what the Senator and I, as members of the Agriculture Committee, voted for in providing new dietary guidance, establishing the new food service management institute, and requiring coordination of all these activities with other Federal departments and other interested groups.

It is also true, as Senator LEAHY states, that the amount of commodities available for school meal programs has fallen in recent years. But I do not want anyone to get the impression that this drop is due to any deliberate policy to shortchange the School Lunch Program. The decline has occurred only because extra, bonus commodities, over and above the amount schools are entitled to, have dwindled after a relatively long period of extremely high levels of donation. The current commodity situation is a result of changes Congress made in agriculture policy to bring supply and demand into better balance, thus avoiding huge, costly Government-owned surpluses.

I would also point out that no one should infer from Senator LEAHY'S remarks that schools are now dropping out of the program in large numbers. Some 90 percent of all schools participate in the National School Lunch Program, and 90 percent of our students have access to it. There are always some schools, for reasons of economics or choice, that will elect not to have a National School Lunch Program, while other schools join the program. Additionally, there is evidence to suggest that those schools which do not participate tend to be located in more affluent communities. I would also note that we are seeing greater participation in school meal programs as more schools add a school breakfast program. Over the last 2 years alone, 6,000 schools have been added to the breakfast program.

I do not want to minimize the concern I have about the effect of a school's nonparticipation, particularly on poor children's access to meals. A school lunch is the only nutritious meal many disadvantaged children get all day. I would even add that we should be concerned not only about what happens to low-income children when schools drop out of the School Lunch Program, but what happens to disabled children requiring modified meals as well.

Nor would I deny that the lack of bonus commodities has made it even more of a challenge for school food service authorities to keep their costs down. But we need to base our suggestions for strengthening the program on facts, without alarmist comparisons with other countries' programs, or outdated and demeaning references to mystery meat.

We are working on getting those facts. USDA, both on its own initiative and at Congress' direction, is studying the decline in bonus commodities, student and school participation trends, and the costs of the program, both to students and to schools. Clearly Congress will be looking closely at the findings of these studies when it is time to reauthorize the National School Lunch Program in 1994. When we get to that debate, I trust the senior Senator from Vermont will agree that Americans care as much about their children as the Japanese do.

IN SEARCH OF AN ENERGY POLICY

Mr. WALLOP. Mr. President, in a few days the Senate will begin debate on S. 1220, a bill to provide our country with a national energy strategy. I will have much to say about the bill as we proceed, but today, I want to share with my colleagues several recent news articles about the National Energy Security Act.

The Wyoming State Tribune, one of my State's leading newspapers located in Cheyenne, recently published several editorials on the issue of our national energy policy. Rather, the editorials discussed the lack of a policy and what should be done. In short, with no coherent energy policy, the United States is slowly accumulating a dependence on foreign produced oil for a substantial share of our energy supply. Oil, both domestic and foreign, currently provides 40 percent of our energy needs. And, as the recent OTA study on oil supply vulnerability points out, 40 percent of this oil is foreign. However, our dependence is projected to grow to 70 percent over the next decade if we do not implement a national energy program.

The bill that I have sponsored with Senator JOHNSTON provides a conservation and production program which decreases dependence on foreign energy supplies. The Tribune articles succinctly discuss the provisions of S. 1220, and why it should be enacted.

Warren Brookes, one of the few editorial page writers who actually understands economics, has provided two interesting columns on the most controversial issues involving a national energy policy—CAFE and ANWR. These acronyms refer to the strategy of our opponents to eliminate both automobile and fossil fuel production in this country. It is a strategy fueled by misinformation and wishful thinking.

This bizarre campaign confronting our bill is explained in the two Brooke's articles. I would like to add one comment that has just come to my attention. Our opponents have flown in the guru of energy alternatives, Amory Lovins. He has a lot of interesting ideas, some of which, believe it or not, we have incorporated in our bill, having thought of them without his help.

But, he has some wild ideas. For instance, at one meeting he argued that efforts to increase energy production have been failures. One example he cited was the fact that the coal boom in the Western States has been a flop. what a surprise to Wyoming since we have now become the Nation's leading producer of coal. And, energy companies are actively bidding on new coal leases in my State to meet the demand from utilities throughout the country. Let me therefore caution my colleagues to maintain a healthy skepticism about any claims that there is an easy soft path to our energy future. There are no silver bullets, it will take a lot of work, it requires a National Energy Security Act. It always has and it always will. It is grossly irresponsible to suggest otherwise.

I would ask that the articles be included at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Wyoming State Tribune, Oct. 22, 1991]

COWBOY STATE COULD BENEFIT FROM NATIONAL ENERGY SECURITY ACT

(By Warren Brookes)

The U.S. Senate will initiate debate this month on a new national energy bill that could result in a potential boon for Wyoming, but more importantly, will assist the United States in lessening its demand for foreign oil.

The Persian Gulf War once again drove home the fact that our country is too dependent on foreign oil:

As Americans were shipped overseas to fight Iraq, Americans at home found energy prices rising despite the fact the United States imported only a limited amount of foreign oil from Iraq before the war. Because of our dependence on foreign oil, our country had no choice but to absorb higher energy costs.

The United States relies on foreign crude oil to supply 65 percent of our country's needs, but many Republicans and Democrats, including President George Bush, would like to see our country's dependence on foreign oil drop to 40 to 45 percent by the year 2010.

This can be accomplished through the passage of a national energy bill that is being sponsored by Wyoming Republican Sen. Malcolm Wallop and Louisiana Democratic Sen. Bennett Johnston.

This national energy bill, which the United States urgently needs as we get closer to the 21st century, will provide some benefits to Wyoming, a state that relies heavily on energy production.

The bill could be beneficial to natural gas and coal producers in our state.

The energy bill will help streamline natural gas regulations and make them beneficial to consumers and business. This will allow

natural gas companies to take advantage of market opportunities. If fully implemented, the National Energy Strategy measures, would increase U.S. consumption of natural gas by almost one trillion cubic feet (about 5 percent) per year.

The bill also would:

Expedite gas pipeline construction in our country. New gas lines could be built more quickly by shortening or eliminating the process of obtaining a certificate of public convenience and necessity. All state and federal environmental laws would apply, but delaying tactics by competitors would no longer be allowed.

Streamline the National Environmental Policy Act process. The Federal Energy Regulator Commission would be the sole agency responsible for administrating the National Environmental Policy Act for new natural gas pipelines.

Deregulate pipeline sales rates. Unless a pipeline is found to have market power in the sale of natural gas, the price at which a pipeline sells natural gas would be deregulated if the pipeline proves comparable transportation and other services to all customers, regardless of whether they are purchasing gas from the pipeline or from other sources.

Improve access to natural gas pipelines transportation services, eliminate the Department of Energy's import and export regulations and encourage the use of natural gas as an alternative transportation fuel.

These proposed changes will enhance the use of natural gas, which is a domestically abundant source of clean energy.

The energy bill would also benefit coal producers in our state. Wyoming's low-sulphur coal is becoming more in demand because it is clean-burning.

Wyoming coal producers would benefit from the fact this energy bill would require our nation's energy department to develop advances in coal technology. This development would include converting coal into synthetic gas or liquid.

The energy bill has many good points, but we do have one concern.

The bill calls for the removal of barriers so that construction of coal slurry pipelines would be made easier.

Coal slurry pipelines use a mixture of water and coal in competing with railroads and barges in transporting this non-renewable energy source.

The idea of a coal slurry pipeline should be a concern for many of us in the West since water is scarce. Using water to transport coal to areas of the country where water is abundant is not in the best interest of our economy or the many people who depend on water for their livelihood.

The National Energy Security Act lays the foundation for a more efficient, less vulnerable and environmentally sustainable energy future. A future we can no longer ignore.

SMOKE SCREEN IS HIDING ADVANTAGES OF ENERGY LEGISLATION

Congress will have its work cut out for itself when it begins debate on the National Energy Security Act of 1991. Before Congress will be able to clearly debate the facts behind this important and much-needed legislation, Congressional leaders will have to cut through the well-developed smoke screen that has been set up by environmentalists and opponents.

The National Energy Security Act, also known as our country's National Energy Strategy, is considered by many as the way to lay foundation for a more efficient, less vulnerable and environmentally sustainable energy future.

Critics of the measure contend that approval of such an energy bill will make our wildlife and pristine lands vulnerable to big business. In this case, America's oil companies.

These critics have developed a poorly-conceived smoke screen that even the average American can see through.

The controversy at the heart of this bill, sponsored by Republican Sen. Malcolm Wallop of Wyoming and Democratic Sen. Bennett Johnston of Louisiana, centers around the plan to drill for oil on the coastal plain of the Arctic National Wildlife Refuge in northeast Alaska.

This area of the United States is special in many ways.

The Arctic National Wildlife Refuge is located 250 miles above the Arctic Circle. During two months of winter, the sun never rises and it is bitterly cold. In the summer months, the ANWR is home to thousands of caribou, great flocks of waterfowl and birds and other wildlife, and swarms of mosquitoes.

Besides being home to an enormous array of wildlife, this refuge also holds oil estimated in the billions of barrels, development of which will result in ten of thousands of jobs and provide our nation's economy with an injection of wealth. Most importantly, this oil will help our country reduce its dependence on foreign oil.

Those opposed to drilling in the ANWR want us to believe there is widespread pollution and permanent environmental damage as a result of oil operations on the North Slope of Alaska and along the Alaskan pipeline.

Data from these areas confirm there have been no declines in wildlife population from oil industry activities, and in many cases wildlife can be found grazing alongside the pipeline.

The argument that the ANWR holds only a 200-day supply of oil and there is no need for further oil exploration is far from the truth. Our government estimates about nine billion barrels of oil are contained in the ANWR and some geologists estimate more in the line of 15 billion barrels. We could expect a production of one million barrels of oil a day for 20 or more years.

What makes the ANWR find so important is its potential. Based on the government's 8.8 billion barrel estimate for the refuge, the ANWR has more proven reserves than Texas (7.0) or other Alaska sites (6.7). Other comparisons are the reserves in California (4.8), Wyoming (0.8), Oklahoma (0.8), Louisiana (0.7) and New Mexico (0.7) Twenty-four other oil-producing states have a total reserve of 2.3 billion barrels.

This Energy Strategy will not destroy the wilderness within the ANWR. In 1980, Congress designated more than 25 percent of the ANWR's coastline as wilderness, placing more than 450,000 acres of the coastal plains off limits to development. This energy plan doesn't propose any reversal of this action.

It is the goal of the National Energy Strategy to reduce our dependence on foreign oil. Without this energy strategy plan, the United States will import 65 percent of its oil needs by the year 2010, but with NES in place, such consumption will be held to 40 to 45 percent.

Finding domestic oil reserves and developing those reserves will help bring the United States one step closer to energy independence.

Many of those backing this new energy plan realize that the United States can't completely reduce all oil imports into our country, but we can make a significant difference in reducing the amount of energy we do import.

In the United States alone, 66 percent of our oil consumption is absorbed by transportation, while 21 percent goes to industry, 8 percent to home/business heating and 4 percent to electric generation.

This much-needed energy bill goes further than other energy bills. For instance, increasing the federal gas mileage standards, called Corporate Average Fuel Economy, is one way to help Americans conserve. The current average is 27 miles per gallon and at least one proposal is calling for a standard of 40 mpg.

The National Energy Strategy benefits the best of both worlds—developing domestic oil needs and encouraging conservation through tax breaks.

Energy is fundamental to our quality of life. The National Energy Strategy is a comprehensive approach that will benefit America in many ways.

ENERGY STRATEGY UNDER SIEGE

The U.S. Senate is about to debate the National Energy Strategy bill (S. 1220). That bill is one of the most pleasant surprises to hit Capitol Hill in a long time. While it would generate three times as much "new energy" from conservation as it does from production, for the first time we have a real "pro-growth" energy strategy.

The credit for this amazingly good bill belongs to Sen. Bennett Johnston, Louisiana Democrat and chairman of the Senate Energy and Natural Resources Committee, ranking Republican Sen. Malcolm Wallop of Wyoming, Energy Secretary James Watkins and deputies Henson Moore and Linda Stuntz.

Sadly, the environmental zealots—led by Sens. Timothy Wirth, Colorado Democrat, Joseph Lieberman, Connecticut Democrat, and Paul Wellstone, Minnesota Democrat-Farmer-Labor—have adopted a "scorched earth" strategy to derail this bill over its proposal to drill for new oil on the Arctic National Wildlife Refuge, which offers the largest potential new field in the United States. (See Table.)

Americans who watch this debate will be subjected to florid rhetoric about the "violation of this pristine wilderness" by "greedy oil companies." The same folks who said the Exxon Valdez spill "forever destroyed" the fisheries in Prince William Sound (which in 1990 and 1991 registered the biggest salmon catches in history), are now raising money by telling fibs about the Arctic National Wildlife Refuge.

Last May 4, Lisa Spear of the Natural Resource Defense Council (NRDC) told a hearing of the Senate Environment Committee that the commercial oil development at Prudhoe Bay on the North Slope of Alaska had produced "the destruction of thousands of acres of wildlife habitat and a decline in local populations of bears, wolves, and birds."

On May 11, Idaho Republican Sen. Steve Symms, referring to Miss Spear's testimony, asked John Turner, director of the U.S. Fish and Wildlife Service: "Does the data available to the Department of the Interior support the claims with respect to the bear population?"

Mr. Turner said, "No, Mr. Chairman." Asked Mr. Symms. "How about the caribou population?" Said Mr. Turner, "They have gone up substantially." Asked Mr. Symms, "How about a loss in the bird population?"

Responded Mr. Turner, "We certainly haven't documented that." Then asked Mr. Symms, "How about the health of the local fisheries?" Mr. Turner replied, "We have not documented substantial loss."

In fact, the Alaska Fish and Game Department reports record numbers of grizzly bears now using the Prudhoe field area for habitat and mating. The snow geese population has gone from 50 nesting pairs to 302. The caribou population has more than quadrupled since 1970. Mr. Symms accused Miss Spear of using her appearance on a C-SPAN televised hearing "to raise money for the Natural Resource Defense Council."

One week later, an "Urgent Environmental Dispatch" from the NRDC asked recipients to contribute money for the NRDC to go to court and "keep oil giants out of Alaska's Arctic wildlife refuge," repeating Miss Spear's charge of declining animal populations at Prudhoe.

NRDC Executive Director John Adams warned that "virtually the entire domestic oil industry are mobilizing to commence drilling before summer's end." In fact, even congressional approval would not mean drilling before the year 2000.

"At stake is the only refuge in North America that protects—in an undisturbed condition—all of the various Arctic ecosystems. And I can tell you firsthand that it won't even take an oil spill to destroy forever the incredibly fragile beauty of its coastal plain," warned Mr. Adams.

In the first place, the drilling and production area will cover fewer than 13,000 acres, which is 0.07 percent of the Arctic National Wildlife Refuge's million acres. In the second place, the "coastal plain" is in fact covered in ice and snow for nine months of the year and in the summer has such a barren crop of mosses, lichens and dwarf shrubs, it looks more like a green moonscape than a wilderness.

Compare this with the Wilderness Society's description of this "coastal plain" as "America's Serengeti . . . an Arctic wilderness of borcal forests, dramatic peaks, and tundra." But area 1002 of the Arctic National Wildlife Refuge, where drilling is proposed, has no trees or mountains in sight. Any relationship between the heavily animal-populated Serengeti plain with its 80-degree year-around temperature and 3 million animals is purely a figment of green imaginations.

As for the "ecological nightmare" promised by the NRDC's Mr. Adams, he should call his friends at the National Audubon Society, which now earns money at three of its sanctuaries with oil exploration and production—on the 26,800-acre Rainey Wildlife Sanctuary in Louisiana, the Corkscrew Swamp Sanctuary near Naples, Fla., and the Baker Wildlife Sanctuary in Michigan, which found "the birds breeding in habitats adjacent to the oil-well site were not noticeably disturbed by the presence of humans or the noise of oil drilling." That agrees with the U.S. Fish and Wildlife Service evaluation on the Arctic National Wildlife Refuge that "exploration and development drilling activities would generate only minor or negligible effects on all wildlife resources."

SHOOTOUT IN THE GREENHOUSE CAFE

The biggest hurdle in the way of a sound, progrowth energy bill, represented by Sens. Bennett Johnston and Malcolm Wallop's National Energy Strategy (S. 1220), is a high-noon shootout expected this week over something called "CAFE" (Corporate Average Fuel Economy).

On one side are those determined to shut down what's left of the U.S. auto industry by forcing the average fleet mileage of new cars to 40 miles per gallon for cars and 30 mpg for trucks by the year 2001, a 40 percent to 50 percent increase from the present. This is the bill sponsored by Democratic Sen. Richard Bryan of Nevada, who drives a big gasguzzling Oldsmobile, as you would in a state where 200 miles is commuting and 80 mph is cruising speed.

On the other side is S. 1220, which leaves future increases in the CAFE standard (now at 28 mpg) up to rulemaking by the Energy Department, taking into consideration a new study by the National Academy of Sciences to be completed in 1992.

Standing in the middle of this bloody battle is a decoy, authorized by Senate Energy Committee Chairman Johnston, Louisiana Democrat, and co-sponsored by Sen. Kent Conrad, North Dakota Democrat, that would increase CAFE standards to 30 mpg by 1996, 34 mpg by 2001, and 37 mpg in 2006.

While that would allow more time for technology to catch up to Senate fantasy, it is only a modest stay of execution for the family-sized autos that are the bread and butter of the U.S. auto industry and the growing preference of consumers for whom the real price of gasoline today is 40 percent less than 1980.

If the Bryan amendment were to pass, the only feasible way to achieve its goals would be to drop the average weight of cars by another 800 pounds to 1,000 pounds, making today's compacts the largest cars available: That would add another 1,700 to 3,000 fatalities a year to the similar number being caused by the current CAFE standard.

In this debate, ideology is swamping both sound science and economics. There are only two arguments supporting raising auto fuel economy—our growing dependence on oil imports and the alleged "green-house global warming" from the carbon dioxide emissions threat.

Henry Schuler, director of energy and national security at the Center for Strategic and International Studies, does make a powerful case that our present growing reliance on Saudi Arabia for eight times as much oil we imported from there five years ago in return for the U.S. military security is a dangerous concoction.

He reminds us that similar U.S. defense for petroleum relationships with Iraq, Iran and Libya imploded when those regimes were overthrown and replaced with anti-U.S. governments, and today we receive no oil from any of these countries.

"Even without internal upheaval in Saudi Arabia, the United States could find itself in another oil shock. If any serious political or economic instability were to affect the Arab world as a whole, the Saudi regime could decide that its survival depended on distancing itself from the United States."

While Mr. Schuler uses this argument to support drilling in the Arctic National Wildlife Refuge, Mr. Bryan and his allies use it to support a massive increase in CAFE. Yet, since CAFE was enacted, foreign oil imports have risen from 38 percent of our supply to 51 percent today.

Simply forcing Americans to drive smaller and more fuel-efficient cars does little to slow demand for oil. In fact, it merely fuels that demand because it lowers its relative cost to the consumer. The only way to curb consumption sharply is massively to force oil and gasoline prices up through taxation.

Yet much the same economic analysis applies to the other issue the CAFE proponents use, global warming. Any number of analyses have demonstrated that taxes on all carbon fuels are infinitely more "efficient" in reducing carbon dioxide than command and control regulation on energy-using equipment like cars.

The latest such study, admittedly done for the Motor Vehicle Manufacturers Association by Charles River Associates, demonstrates that a 40 mpg CAFE standard would cost the consumers $104 per ton of carbon dioxide removed, or $45 per barrel of oil saved. By contrast, a gasoline tax would cost $23 per ton of carbon dioxide removed and only $10 per barrel of oil saved, while carbon taxes on all fossil fuels would cost only $2 per ton of carbon dioxide removed.

But politicians do not have the guts to pass such taxes and want to do it indirectly by forcing auto-makers to slash auto weight and safety in a vain effort to save fuel and the planet.

As to the latter, they would do well to cool their fevered brows and read the latest National Academy of Sciences study, which concluded in September and found that the greenhouse scenarios now projected "will be no more severe and adapting to them will be no more difficult than for the range of climates already on Earth and no more difficult than for other changes humanity faces" and far less dangerous than AIDS or other epidemics.

Besides, raising CAFE to 40 mpg would, at best, lower these warming scenarios by 2/100 of a degree! Forget it.

SENATE RESOLUTION 210—PROMOTE AND MAINTAIN A CEASEFIRE IN YUGOSLAVIA

Mr. LEVIN. Mr. President, I am grateful that last evening the Senate approved Senate Resolution 210, the Levin-Lugar resolution urging the President to provide active leadership in encouraging the United Nations to promote and maintain a cease-fire in Yugoslavia. The United Nations has not been involved—has not been asked to become involved—in a peacekeeping effort in Yugoslavia. The ongoing civil war in Yugoslavia threatens the peace and stability not only of the region, but all of Europe. Vital United States and Western interests are threatened. It is important that the United States encourage U.N. efforts to, first, stop the bloodshed, and second, help structure a just space.

The loss of life and violations of human rights and decency in this war have been appalling. The unnecessary destruction of cultural and historical treasures is a tragedy. The deteriorating situation poses both a challenge to and an opportunity for the United Nations to help create peaceful world order.

If ever there was an need and an appropriate challenge for U.N. involvement, this war is it. Senate Resolution 210 that the Senate passed last night urges the President to provide active leadership in encouraging the United Nations to promote and maintain a cease-fire in Yugoslavia. The resolution also urges the President to support consideration in the Security Council of the sending of a United Nations peacekeeping force to Yugoslavia.

The European Community has mounted and sustained a concerted effort to bring peace. Its commendable efforts have yet to succeed, and its multiple cease-fires have not held. It is time for the United Nations to become involved, beyond the single Security Council resolution adopted September 25, implementing an international embargo on weapons and military equipment. It is time for the United States to provide active leadership at the United Nations to avert a further escalation of the bloody catastrophe engulfing Yugoslavia.

Mr. President, the difficult issues involved in the current conflict in Yugoslavia, and the question of borders, should be resolved by negotiation and mutual consent, not military actions. This is a challenge the United Nations should confront, and the U.S. Government should provide leadership in this effort.

I want to thank Senator LUGAR for his cosponsorship and staunch support. I also want to thank a number of other Senators, including Senators MITCHELL and DOLE, for their assistance in shaping this resolution and its passage.

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT—S. 1745

Mr. FORD. Mr. President, I ask unanimous consent that the previous unanimous-consent agreement governing S. 1745 be further modified to include an amendment by Senator WARNER regarding prospective application on which there will be 20 minutes for debate equally divided and controlled in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. I further ask unanimous consent that a possible Kennedy second-degree amendment to the Warner amendment on the same subject be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I ask unanimous consent, under the previous unanimous-consent agreement, that the Kennedy second-degree amendment be limited to the same time as the Warner amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND COOPERATION, 1990

INTERNATIONAL CONVENTION ON SALVAGE, 1989

CONVENTION FOR A NORTH PACIFIC MARINE SCIENCE ORGANIZATION [PICES]

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following matters:

Executive Calendar 11. International Convention on Oil Pollution Preparedness, Response and Cooperation;

Executive Calendar 12. International Convention on Salvage, 1989; and

Executive Calendar 13. Convention for a North Pacific Marine Science Organization [PICES].

I further ask unanimous consent that the treaties be considered as having been advanced through the various parliamentary stages up to and including the presentation of the resolutions of ratification, that no amendments, understandings or reservations be in order, that any statements appear, as if read, in the RECORD, and that the Senate vote, en bloc, on the resolutions of ratification without intervening action or debate with one vote to count as three.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I ask for a division vote.

The PRESIDING OFFICER. A division is requested. All those in favor will stand and be counted. All those opposed will stand and be counted.

In the opinion of the Chair, two-thirds of those present having voted in the affirmative, the resolutions of ratification are agreed to.

The resolutions of ratification agreed to are as follows:

INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND COOPERATION, 1990

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, with Annex, adopted at London November 30, 1990.

INTERNATIONAL CONVENTION ON SALVAGE, 1989

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Convention on Salvage, 1989 (Salvage Convention), done at London April 28, 1989 and signed by the United States March 29, 1990.

CONVENTION FOR A NORTH PACIFIC MARINE SCIENCE ORGANIZATION (PICES)

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention for a North Pacific Marine Science Organization (PICES), which was done at Ottawa on December 12, 1990, and signed by the United States on May 28, 1991.

Mr. PELL. Mr. President, I am pleased to present three treaties for the Senate's consideration today.

The first treaty is the International Convention on Salvage, which is designed to encourage sound environmental practices by commercial salvors, and to ensure that they receive adequate compensation for their work, especially when environmental damages are minimized by their efforts. This Convention includes the following provisions:

It imposes reciprocal obligations upon salvors, shipowners, and ships' masters to exercise "due care" in preventing or minimizing damage to the environment.

It adds a new factor to be considered in determining the amount of a salvage award when a salvage operation is successful "the skill and efforts of the salvors in preventing or minimizing damage to the environment.

And it contains a special compensation provision so that, even when a salvage operation is unsuccessful, salvors will be able to recover their expenses when the salvage operation involves a vessel which, by itself or its cargo, threatens damage to the environment.

The second treaty is the International Convention on Oil Pollution Preparedness, Response, and Cooperation. This treaty is designed to increase the protection of the marine environment in a number of ways, including the creation of a global network to coordinate pollution response resources to minimize damage from catastrophic oil spills. In addition, this Convention would—

Require ships to have oil pollution response plans on board;

Require ships and offshore platforms to report their own oilspills and spills they observe;

Require establishment of a national response plan, including the pre-positioning of response equipment;

Provide for the sharing of technical support and the results of R&D activities; and

Promote the establishment of bilateral agreements for oil pollution preparedness and response.

The third treaty is the Convention for the North Pacific Marine Science Organization, known as "PICES." The purpose of this Convention is to establish a new scientific organization to coordinate and promote collaborative, multidisciplinary research in the North Pacific Ocean. The Convention will make a useful contribution to the study of the role of the ocean in global change as well as other important environmental issues, such as pollution and environmental quality as well as fisheries research.

I urge my colleagues to approve these three treaties and give their advice and consent to their ratification.

Mr. FORD. Mr. President, I ask unanimous consent that the motions to reconsider the vote be tabled en bloc and that the President be notified of the Senate's action and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE ORDER WITH RESPECT TO HAITI MESSAGE FROM THE PRESIDENT—PM-91

The Presiding Officer laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Pursuant to section 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. section 1703(b), and section 301 of the National Emergencies Act, 50 U.S.C. section 1631, I hereby report that I have again exercised my statutory authority to issue an Executive order with respect to Haiti that:

(a) Continues to block all property including bank deposits of the Government of Haiti in the United States or in the control of U.S. persons including their overseas branches;

(b) Continues to prohibit any payment to the *de facto* regime in Haiti by U.S. persons or by any person organized under the laws of Haiti and owned or controlled by a U.S. person, and to require that payments owed to the Government of Haiti be paid when due into an account in the Federal Reserve Bank of New York, unless otherwise directed by the Treasury, to be held for the benefit of the Haitian people; and

(c) Prohibits, effective 11:59 p.m. e.s.t., Tuesday, November 5, 1991, trade between Haiti and the United States, with an exception for trade in informational materials. The order further excepts exportation to Haiti of (i) donations intended to relieve human suffering; and (ii) rice, beans, sugar, wheat flour, and cooking oil. An import exception is also created for goods containing parts or materials exported from the United States through Tuesday, November 5, 1991, assembled or processed in Haiti, and imported into the United States before midnight on December 5, 1991.

Items (a) and (b) reaffirm the action I took in issuing Executive Order No. 12775 on October 4, 1991, and continue to be warranted by the circumstances described in my report to the Congress of October 4, 1991, regarding that Executive order. Item (c) is a new action taken in view of the continuing crisis in Haiti and of the resolution of the Meeting of Foreign Ministers of the Organization of American States adopted on October 8, 1991, which *inter alia* urges member States to impose a trade embargo on Haiti.

I have instructed that this order be implemented with due regard to humanitarian needs of the Haitian people.

I am enclosing a copy of the Executive order.

GEORGE BUSH.

THE WHITE HOUSE, *October 28, 1991.*

MESSAGES FROM THE HOUSE

At 2:20 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2896. An act to authorize the Secretary of the Interior to revise the boundaries of the Minute Man National Historical Park in the State of Massachusetts, and for other purposes; and

H.R. 3401. An act to amend the Public Health Service Act to establish a program for the prevention of disabilities, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2896. An act to authorize the Secretary of the Interior to revise the boundaries of the Minute Man National Historical Park in the State of Massachusetts, and for other purposes; to the Committee on Energy and Natural Resources.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2081. A communication from the Comptroller General of the United States, transmitting, pursuant to law, reports on the status of budget authority that was proposed for rescission by the President in his fifth special impoundment message for fiscal year 1991, pursuant to the order of January 1, 1975, as modified by the order of April 11, 1986; referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Banking, Housing and Urban Affairs, the Committee on Commerce, Science and Transportation, the Committee on Finance, and the Committee on Foreign Relations.

EC-2082. A communication from the Secretary of the Interior, transmitting, a draft of proposed legislation to amend the Land and Water Conservation Fund Act of 1965 to provide for the establishment of the America the Beautiful Passport to facilitate access to certain federally-administered lands and enhance recreation and visitor facilities thereon, to authorize the Secretary of the Interior and the Secretary of Agriculture to enter into challenge cost-share agreements, and for other purposes; to the Committee on Energy and Natural Resources.

EC-2083. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report to update and improve the information contained in the report dated September 1982 entitle "Status and Trends of Wetlands and Deepwater Habitats in the Conterminous United States, 1950's to 1970's"; to the Committee on Environment and Public Works.

EC-2084. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report concerning the probable impacts of extension of the American Canal on rates of ground water declines and resultant subsidence in the El Paso-Juarez area; to the Committee on Environment and Public Works.

EC-2085. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation to authorize the sale to the Republic of Korea of obsolete ammunition from War Reserve Stocks; to the Committee on Foreign Relations.

EC-2086. A communication from the Assistant Attorney General (Legislative Affairs), transmitting, a draft of proposed legislation to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of legitimately produced controlled substances, to assist the States in their efforts to control diversion, to provide for the utilization of electronic orders and records systems, to provide for the maintenance of effective safeguards against diversion, and for other purposes; to the Committee on the Judiciary.

EC-2087. A communication from the Assistant Attorney General (Legislative Affairs), transmitting, a draft of proposed legislation to amend the Federal Food, Drug, and Cosmetic Act to revise the provisions added thereto by the Prescription Drug Marketing Act of 1987; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 15. A bill to combat violence and crimes against women on the streets and in homes (Rept. No. 102-197).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1405. A bill to authorize appropriations for certain programs and functions of the National Oceanic and Atmospheric Administration, and for other purposes (Rept. No. 102-198).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance:

Michael H. Moskow, of Illinois, to be a Deputy United States Trade Representative, with the rank of Ambassador; and

David M. Nummy, of Oklahoma, to be an Assistant Secretary of the Treasury.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BROWN:

S. 1885. A bill to reauthorize the Uranium Mill Tailings Radiation Control Act of 1978; to the Committee on Energy and Natural Resources.

By Mr. MCCONNELL:

S. 1886. A bill to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the medicaid program and to maintain the treatment of intergovernmental transfers as such a source; to the Committee on Finance.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. INOUYE, Mr. DASCHLE and Mr. BURDICK):

S. 1887. A bill to amend the Public Health Service Act to establish the National Center for Nursing Research as a National Institute, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HEFLIN:

S. 1888. A bill to amend the Internal Revenue Code of 1986 to allow S corporations to sponsor employee stock ownership plans; to the Committee on Finance.

By Mr. SIMPSON (for himself and Mr. WALLOP):

S. 1889. A bill to designate the United States Courthouse located at 111 South Wolcott in Casper, Wyoming, as the "Ewing T. Kerr United States Courthouse"; to the Committee on Environment and Public Works.

By Mr. CRANSTON:

S. 1890. A bill to require the President to investigate allegations that China is exporting products made with forced labor, and for other purposes; to the Committee on Finance.

By Mr. THURMOND (for himself and Mr. HOLLINGS):

S. 1891. A bill to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

Mr. SASSER:

S. Res. 211. A resolution expressing the sense of the Senate regarding human rights abuses in China against writers and journalists; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BROWN:

S. 1885. A bill to reauthorize the Uranium Mill Tailings Radiation Control Act of 1978; to the Committee on Energy and Natural Resources.

URANIUM MILL TAILINGS RADIATION CONTROL ACT REAUTHORIZATION

• Mr. BROWN. Mr. President, today I rise to introduce legislation to reauthorize the Uranium Mill Tailings Radiation Control Act of 1978.

From the 1940's through 1960, uranium ore was processed mostly by private companies for use by the Department of Defense. When these companies had completed their contracts with the Federal Government, uranium mills were shut down and large piles of uranium tailings were left on site.

At the time the mills were closed, the health effects of the tailings, which contain radioactive elements, were unknown. Recognizing the threat to human health and the environment that these unstabilized tailings posed, Congress enacted Public Law 95-604, the Uranium Mill Tailings Radiation Control Act of 1978.

Public Law 95-604 states that "every reasonable effort be made to provide for stabilization, disposal, and control of the tailings in a safe and environmentally sound manner to ensure public health, safety and welfare."

Since the law's inception in 1978, the Department of Energy [DOE] and affected States have worked together to make the uranium mill tailings remedial action [UMTRA] project a success. DOE, in conjunction with the States, is responsible for the cleanup of 24 inactive uranium mill tailings sites in 10 States—9 of which are located in Colorado—and on some Indian lands. To date, the cleanup of nine of these sites has been completed.

Although significant progress has been made cleaning up these sites, we have been told by DOE that the remediation of all 24 sites will not be completed by the expiration of the UMTRCA in 1994.

So that our communities neighboring these sites can be assured of the Federal Government's commitment to eliminating the health and environment risks associated with these tailings, I have introduced the Uranium Mill Tailings Radiation Control Reauthorization Act. The bill will extend the authorization of the Uranium Mill Tailings Remedial Action Program through September 30, 1998.•

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. INOUYE, Mr. DASCHLE, and Mr. BURDICK):

S. 1887. A bill to amend the Public Health Service Act to estabish the National Center for Nursing Research as a National Institute, and for other purposes; to the Committee on Labor and Human Resources.

NATIONAL INSTITUTE OF NURSING RESEARCH ACT

• Mr. HARKIN. Mr. President, I rise today to introduce, on behalf of myself, Senator KENNEDY, Senator INOUYE, Senator BURDICK, and Senator DASCHLE, the National Institute for Nursing Research Act. This important legislation would appropriately elevate the status of the successful National Center for Nursing Research [NCNR] at the National Institutes of Health to that of an institute—the National Institute for Nursing Research.

The legislation we are introducing today is simple and straightforward. It redesignates the National Center for Nursing Research as the National Institute for Nursing Research, a change which appropriately reflects the fact the NCNR's existing structure and range of activities is in line with other institutes at NIH. Our bill has the support of a large number of national organizations as well as a bipartisan coalition in Congress. Companion legislation has already been approved without dissent by the House of Representatives. And I am very pleased that our distinguished chairman of the Committee on Labor and Human Resources and longtime leader on behalf of American nurses, Senator EDWARD KENNEDY, will include this legislation in his chairman's recommendations for the reauthorization of the National Institutes of Health later this year.

Mr. President, it is not only appropriate that Congress take the important step of elevating the status of the Nursing Center to that of an institute, it is a step that is overdue. America's nearly 2 million nurses have for too long been denied the recognition and status they deserve within our health care system. Throughout our Nation's history, nurses have been at the core of our health care system, providing high quality, cost-effective care. Yet, the role and accomplishments of nurses within the health care system have too often not been given appropriate equal recognition. And so it has been in the area of research. While NCNR has proven itself as a major force within NIH and despite a structure and list of ac-

tivities which put it on par with other institutes, it has not been recognized as such by being given the designation as an institute.

In 5 short years since its establishment, the National Center for Nursing Research has established itself as the world's leader in nursing research. NCNR supports a broad range of research to better our ability to prevent and treat the numerous diseases and disabilities confronting Americans. Its research focuses on how people of all ages respond to disease and its treatment, physiologically and psychologically, and on the promotion of improved health and the prevention of disease and disability. This emphasis on preventive health is most appropriate as nurses have long been at the forefront of health promotion and disease and disability prevention. As aptly noted by NCNR, because of nurses' close proximity to patients and their families, they are ideally situated to carry out these kinds of research and to translate findings directly into nursing practice and better health care outcomes.

Mr. President, the National Center for Nursing Research has been tremendously successful in its short history. Through its Division of Extramural Programs and Division of Intramural Research, NCNR has produced critical research findings that are already resulting in more affordable, higher quality health care for many Americans. For example, though a grant from NCNR, nurse researchers at the University of Iowa are developing cost-effective ways of reducing the incidence of falls among frail, older Americans. The results of this research will greatly improve the quality of life for many older Americans while lowering long-term care costs for themselves and their families by reducing the incidence of broken hips, a leading cause of nursing home admissions.

Another notable NCNR-supported study by researchers at the University of Wisconsin School of Nursing resulted in improved care and reduced costs for prematurely born babies. As recently reported in the New York Times, by creating a less stressful hospital environment for premature babies, project directors were able to demonstrate an improvement in their breathing and eating, a reduction in complications, improved neurological development, and shorter hospital stays. The cost of care for the infants in the study was significantly reduced by an average of $12,250 per baby.

Mr. President, I have been pleased, as chairman of the Senate Appropriations Subcommittee that funds the National Institutes of Health, to have been able to preside over a significant expansion of support for NCNR. In my 3 years as chairman, we have been able to increase funding for nursing research by nearly 50 percent, from $33 million in fiscal year 1990 to a Senate-approved level of $45.9 million. And I am convinced that this investment is among the wisest and most cost-effective we have made. I have been particularly pleased with the investment NCNR has in turn made in critical areas such as women's health, long-term care for the elderly and disabled, and the special health care needs of rural America.

The elevation of NCNR to institute status will help further build on nursing research's impressive beginning at NIH.

Mr. President, I want to thank the members of my nurses advisory committee for their input and assistance on this proposal. I formed this organization, which is made up of nurse leaders from across Iowa, in 1985, to study health care issues and to give me advice and recommendations for reform. They have been of invaluable assistance to me over the past 6 years, providing me with expert advice and ideas that turned into legislative action here in the Senate. Their work is valued and trusted and I would recommend to my colleagues the formation of similar nurse advisory groups.

Mr. President, in closing, I simply would urge my colleagues to join us in supporting this legislation and hope that it gains swift approval so that nursing research can take its rightful position at the NIH.●

By Mr. HEFLIN:

S. 1888. A bill to amend the Internal Revenue Code of 1986 to allow S corporations to sponsor employee stock ownership plans; to the Committee on Finance.

ESOP PROMOTION ACT OF 1991

● Mr. HEFLIN. Mr. President, I arise today to introduce the ESOP Promotion Act of 1991. This legislation would allow S corporations to sponsor employee stock ownership plans, which they are now prohibited from doing.

An ESOP is a tax-exempt retirement trust that is invested in stock of the employee corporation. Employees have accounts in the ESOP's which are paid to them after they leave the company. Employees are not taxed on their accounts until the stock is actually distributed to them.

ESOP's create excellent opportunities for employees to share in the ownership of the corporation for which they work. Since 1974, when Congress enacted the first tax measures designed to encourage employee stock ownership plans, the number of employee-owned companies has grown from about 1,600 to approximately 11,000. The number of employees owning stock has jumped from 250,000 to over 11 million employees.

ESOP's can be very beneficial to small businesses. First, an ESOP can play an important role in the company's employee benefit program by supplementing other retirement plans such as pension and profit-sharing plans. Also, the employer may benefit from increased employee morale and improved productivity resulting from providing employees an equity interest in the company. Employee ownership can greatly enhance the overall quality of work and competitiveness of the corporation.

Unfortunately, under current law only C corporations can sponsor ESOP's. Therefore, S corporations, which are small and midsize corporations comprising nearly one-third of all corporations in America, are not allowed to establish these plans. As a long-time supporter of small business I am concerned that these companies have been unable to take full advantage of ESOP's. Therefore, my legislation is intended to correct the situation by permitting S corporations to sponsor ESOP's.

I urge my colleagues to support this legislation which I believe will go far toward encouraging more employee ownership, which will benefit both employees and their companies.●

By Mr. SIMPSON (for himself and Mr. WALLOP):

S. 1889. A bill to designate the U.S. Courthouse located at 111 South Wolcott in Casper, WY, as the "Ewing T. Kerr United States Courthouse"; to the Committee on Environment and Public Works.

EWING T. KERR UNITED STATES COURTHOUSE

Mr. SIMPSON. Mr. President, I am so very pleased to join my colleague, MALCOLM WALLOP, as we pay tribute to a very marvelous, fine man and someone I have called friend for a lifetime—Judge Ewing T. Kerr. For today we will introduce a bill which will designate the Federal courthouse in Casper, WY., as the "Ewing T. Kerr United States Courthouse."

Although Judge Kerr was born in Bowie, TX in 1900, it did not take him long to see the light and move north to Wyoming. He landed in Cheyenne 1 year after the streets of the frontier town had been paved. First came the roads—then came Judge Kerr. Things were looking up for both. In 1927 Ewing Kerr was admitted to practice law in Wyoming so he placed his shingle on the door and began to build a lifetime reputation as a brilliant, steady, thoughtful, and dedicated member of the legal profession. The following year, in 1928 he began to rise through the ranks of his profession and he served as the assistant U.S. attorney from 1928 to 1933. His career was now soaring and in 1938 Gov. Nels H. Smith appointed him as Wyoming's Attorney General.

He served with clear distinction as attorney general until he heard a different kind of call—the call to serve his country in the Army, which he did for 3 years. After his military service he again practiced law and soon was ap-

pointed as a Federal district judge, obtaining senior status in this position in 1975, and it is in this capacity that he still serves his community, his State, and his country.

I have quickly stated only the briefest facts of quite a remarkable legal career but I have not even begun to scratch the surface of what makes this man so remarkable and so fully deserving of this special tribute and this unique honor. For Judge Kerr is a learned man, a dedicated legal scholar, and a distinguished judge—yes, he is all of this but he is also so very much more.

Though his legal career has been a remarkable one—I would be so remiss if I did not mention the lives he has touched through the years as he put his thoughts, beliefs, and his concern for his fellow man into action through his participation in a wide variety of different civic and charitable organizations. Almost from the day he arrived in Cheyenne in 1927 he began a commitment to public service that he has honored to this very day.

He has worked over long years to help the chamber of commerce, the Red Cross, the Salvation Army, various fraternal groups, his beloved Rotary Club, and his church. And he has done it all in a genuine spirit of kindness, compassion and consideration for others which is truly remarkable. When his predecessor retired he gave Judge Kerr some very valuable advice. "Stay active in community affairs," advised the jurist, "for it will make you a better judge." That predecessor was already very aware of Judge Kerr's active involvement in his community—and I hunch he was just advising Judge Kerr to "keep it up". And he surely did, as he has, and he always will.

In his early days he also loved to involve himself in the workings of local and national politics as much as possible. He learned at a tender age that democracy is not a spectator sport and he became involved early and often as a young attorney in Wyoming. If a cause or an organization was ever in need of his special talents, some counsel or advice, or just some time and his valuable assistance—he was always ready and available to serve.

And now—even though the Judge has attained senior status—he has in no way retired. He maintains his outside interests, serves his community, still gives a speech now and then—to the delight of his audiences—and takes an active role in raising his two dear granddaughters. A visit to the Kerr household means confronting old law books, books of history, art and literature, and an assortment of bikes, skateboards, roller skates, and an incredible array of the trappings of childhood.

Nothing personally pleases me more than taking this moment to "give credit where credit is due" and so I am very proud to be a part of this effort. No one is more deserving of this tribute than the Judge—a man who has been so important and such a vital part of his community, his State, and his country. His long and distinguished years of service to the legal and judicial community, combined with his innate civility and kindness, his compassion, his willingness to serve, his intellect and his devotion to duty and the pursuit of the truth all make him so very worthy of the honor of naming the Federal courthouse in Casper, WY the "Ewing T. Kerr United States Courthouse." We do this to honor a man who has made so many important contributions to our lives that we will remember his name for years to come as it graces this Federal building. This is just our very small way of saying, "Thank you, Judge Kerr. You made a difference in every way in all our lives—especially in mine—and you will never be forgotten. We love you."

He swore me into the Federal District Court in the District of Wyoming in August of 1958 and I shall never forget his remarks to "our class." They were timeless, moving, and memorable and I ask unanimous consent to insert them into the RECORD at this time along with the text of the bill.

God bless you, kind sir.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1899

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) Ewing T. Kerr has dedicated 64 years of his life to the practice of law in the State of Wyoming;

(2) over a period of 36 years, as a Federal district judge, Ewing T. Kerr has embodied the spirit of public service and has been dedicated to upholding the law of the land; and

(3) Ewing T. Kerr deserves recognition, honor, and gratitude.

SEC. 2. DESIGNATION.

The United States Courthouse located at 111 South Wolcott in Casper, Wyoming, is designated as the "Ewing T. Kerr United States Courthouse".

SEC. 3. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the United States Courthouse referred to in section 1 is deemed to be a reference to the Ewing T. Kerr United States Courthouse.

CENTENNIAL RECOLLECTIONS

(By Hon. Ewing R. Kerr)

During this year, 1990, we have celebrated the centennial of Wyoming's statehood. In addition, I marked my 90th birthday. These events have given me cause to think back on Wyoming's history as well as my own. In this Article I share some of those recollections.

THE TERRITORIAL COURT

Prior to 1890, the Territory of Wyoming had three federal judges who were appointed by the President and confirmed by the Senate and served for six-year terms. These judges convened once a year, acting as a Territorial Supreme Court, and heard appeals taken from their own decisions. Judge A.C. Campbell, an early Wyoming attorney whom I knew well and who was a prolific writer and a member of the Wyoming constitutional convention, used to say facetiously that the judges convened once a year to affirm each other's decisions. However, a review of Volume I of the Territorial Decisions shows that the judges actually reversed many of their own decisions.

THE TRANSITION INTO STATEHOOD

When Wyoming became a state on July 10, 1890, selection of a state supreme court was not an easy task. Under Section 20 of the Act of Admission of the State of Wyoming, the Territorial Supreme Court justices were to serve as justices of the new Wyoming Supreme Court until that court could be organized. The justices during this interim period were Chief Justice Willis Van Devanter (who had become territorial chief justice at the young age of thirty), Micah Saufley and Asbury Conaway. They served until the supreme court was organized on October 11, 1890.[1] The first three judges of the Wyoming Supreme Court, elected on September 11, 1890, were Chief Justice Van Devanter, Justice Groesbeck and Justice Conaway. The new justices drew straws, and Justice Van Devanter drew the short term and chief justice position. However, a few days later he resigned from the court,[2] and Homer Merrell was appointed to fill the vacancy until the general election to be held November 8, 1892. At that time, Gibson Clark was elected to fill the vacancy on the court. Justice Groesbeck succeeded Justice Van Devanter as chief justice of the new supreme court.

Former Justice Van Devanter continued to practice law in Cheyenne and set up a partnership with his brother-in-law, John W. Lacey. Van Devanter and Lacey was Wyoming's most prominent and successful law firm. John Lacey had served on the Territorial Supreme Court from 1879 to 1886, and was its chief justice from 1884 to 1886, when he resigned to return to private practice. Judge Lacey was not only the outstanding judge in Wyoming during that era, he was considered the ablest lawyer in the Rocky Mountain Region. He served as general counsel for Harry Sinclair in the Tea Pot Dome scandal, and he was the attorney for the Union Pacific Railroad and several other large corporations. He had the biggest law practice of any lawyer in Cheyenne. Judge Kennedy[3] told me that it took a lot of courage to decide a case against John Lacey, but eventually he had to do it. That was the kind of reputation as a lawyer he had. Judge Lacey's home of forty years is now as the Whipple House in Cheyenne. In 1903, Justice Van Devanter was appointed to the United States Court of Appeals for the Eighth Judicial Circuit; and on December 12, 1910, he was nominated by President Taft to the United States Supreme Court. Justice Van Devanter is the only citizen of Wyoming in its first 100 years to have been appointed a Justice of the United States Supreme Court. He served on the Court from 1911 to 1937 and wrote the opinion for the landmark water case, Wyoming v. Colorado.[4]

A former law partner of Justice Van Devante, Charles Potter, advanced to the Wyoming Supreme Court in 1895. Justice Potter served on the court for over thirty-three years, including more than twenty years as chief justice. As a young lawyer, I had the privilege of appearing before Justice Potter during his last year on the bench.

Footnotes at end of article.

Justice Potter was a very strict chief justice and kept lawyers strictly on the subject matter appealed. The Potter Law Club at the University of Wyoming College of Law is named in his honor.

Another prominent, long-term member of the Wyoming Supreme Court was Justice Fred Blume. Justice Blume was appointed in 1921 to replace justice Blydenburg. Justice Blume served more than thirty years on the Wyoming Supreme Court. He was a recognized Roman law scholar and authored an English translation of the Justinian Code. He was frequently invited to law schools, including the University of Chicago, to lecture on Roman law. In his early opinions, he used nearly as much Latin as English. The Blume Room at the University of Wyoming Law Library is named in his honor.

Ralph Kimball, a Lander lawyer and district judge, was appointed to the Wyoming Supreme Court in 1921. He is the third member of the high court to serve more than thirty years on the bench. He was buried on his 81st birthday. In memorial proceedings before the Wyoming Supreme Court in 1959 honoring Justice Kimball, all of those contributing spoke of his kindness, courtesy and patience along with his ability as an able and insightful jurist.[5]

READING LAW

In addition to being highly respected jurists, Justices Lacey, Blume and Kimball had one thing in common—they all had "read law," instead of attending and graduating from a law school. Justice Blume held a Ph.D. in government and economics, but Justice Lacey never attended college. Justice Lacey studied and worked in Justice Van Devanter's father's law office while he was employed as a high school principal in Indiana. Many lawyers of their day acquired their legal training by "reading law." It was an accepted practice then, as reflected by the unanimous approval of Justice Blume's nomination to the supreme court in 1921. However, attitudes changed somewhat later. For example, in 1955, there was some opposition from the Wyoming Bar to my own nomination to the federal bench because I, too, "read law" instead of attending law school. But I'd say at least one-third of the lawyers during the time I practiced law had "read law."

FEDERAL JUDGES

President Benjamin Harrison appointed John A. Riner as the first United States District Judge for the District of Wyoming in 1890. Judge Riner began his tenure at the age of forty, and retired in 1921, after serving thirty-one years. He set the precedent for longevity in service on Wyoming's federal bench.

In the early days, federal court was held on the second floor of a building located on 16th Street in Cheyenne between Capitol and Warren Avenues. The first federal courthouse in Cheyenne was not built until 1904. It was in this courthouse that Judge T. Blake Kennedy[1] heard the famous Tea Pot Dome case in 1925. This first federal courthouse, situated across the street from the Boyd Building, now houses a bank.

My predecessor on the federal bench, Judge Kennedy, came to Cheyenne to live in 1901 and established himself as a prominent local attorney in 1903 by representing the infamous Tom Horn in his trial for murder. Mr. Kennedy was nominated to the federal bench by President Warren G. Harding in 1921, and served as a federal district judge until 1955. He was an outstanding judge and well respected by the legal profession. Because the case load was light during his term, he frequently sat on Eighth Circuit panels.[7] After the Tenth Circuit was formed in 1925, with its seat in Denver, he served even more frequently on appellate panels. Succeeding Judge Kennedy was not an easy task for me, but I have tried to carry out his policies during my own tenure of thirty-four years on the bench.

WOMEN ON JURIES

Wyoming, of course, was the first state to allow women the right to vote, getting them equal voting rights while we were still a territory. It was not until 1920 that the nineteenth amendment was ratified, conferring the right to vote on all women in the United States. Wyoming can also claim the first women jurors in the world—they served on a petit jury in Laramie in 1868. It was the personal view of the Laramie District Court judge, Judge John Howe, who seated these women that, because women had the right to vote in the Territory, they should be entitled to sit on a jury. The women wore heavy veils and refused to be photographed, but the news spread throughout the world. Even the King of Prussia cabled congratulations to President Grant.[8] The newspapers caricatured the women. One capition was "Baby, baby, don't get in a fury; your mama's sittin' on the jury."[9] Both defense and prosecuting attorneys objected to the women, and after being overruled the defense attorney indicated his intent to appeal to the Wyoming Supreme Court. Judge Howe responded, "With Kingman and me on the Court, how far do you think you will get?" To this the defense attorney replied, "Your Honor, it may not do any good to appeal, and my experience teaches me that Judges never retire, but fortunately they sometimes sicken and die." After the trial, Judge Howe praised the women for exerting a refining influence on the courtroom as a whole.

But Wyoming has not always lived up to her name, the Equality State. Judge Howe's view was not popular, and the custom of women juries retired when Judge Howe did, two years later. Women were officially denied the privilege of serving as jurors in federal and state courts in Wyoming from 1868 until 1948. During that era, federal court procedure, including qualification of jurors, was governed by state law. Wyoming law provided that males over the age of twenty-one were eligible to serve on juries. Thus, no women served on a state or federal jury in Wyoming until the law was changed in 1948.

Many states permitted women to serve as jurors before Wyoming officially did. I am familiar with the subject because several women's organizations came to me and asked me to draft legislation permitting women to serve as jurors in Wyoming. They came to me because I was Chairman of the Republican Party in Wyoming, and a majority of both houses of the state legislature were Republicans. Nevertheless, it was not an easy task to pass such a law because many lawyers in the legislature were opposed to it. Governor Crane, however, supported the bill, which simply changed the word "male" in the statute to "citizen." Eventually, the bill passed by a slight margin and was signed into law.

AUTOBIOGRAPHY

I was born in 1900 in Bowie, Texas, and moved with my family to Indian Territory (later Oklahoma) when I was one. I received a B.A. degree in economics and government from the University of Oklahoma and then a B.S. degree in education from Oklahoma Central State University. When I was principal of the junior high school in Hominy, Oklahoma, from 1923 to 1925, I boarded with the family of Kenneth Lott. Mr. Lott had graduated from and taught law at the University of Kansas School of Law. I became interested in law myself and was encouraged by Mr. Lott. Mr. Lott had saved all of his text books from law school, and some of the examinations he had given as an instructor. I began studying these and working in his office. I "read law" under Mr. Lott for two years.

In 1925 I moved to Cheyenne at the suggestion of my sister who was a teacher there. I continued to "read law" for about a year while serving as principal of Corlett Elementary School.[10] In 1927 I took the bar examination before Clyde Watts, later District Judge Watts. The exam was administered in the Boyd Building and lasted half a day. It consisted of essay questions on subjects of state law such as criminal and contracts law; there were no multiple choice questions as there are today. (In fact, I've never understood the purpose of the multi-state bar exam or what those questions have to do with the law business.)

I have always enjoyed politics, especially campaigning for and writing and giving speeches on behalf of various candidates. I served longer as Wyoming State Republican Party Chairman (eight years) than anyone else in the history of Wyoming. In 1938, I campaigned for Nels Smith, one of only two Republican governors elected in the country that year. I campaigned all over the State on the issue of abolishing the sales tax. Although we couldn't do without the tax now, abolishing it had great appeal then. It was a very effective campaign.

One of my early speaking engagements actually led to my first federal position. At the last minute, I was asked to introduce Senator Francis E. Warren, who was scheduled to speak at a gathering in Pine Bluffs, a small community east of Cheyenne. Some time later, when a vacancy arose in the United States Attorney's Office for an Assistant United States Attorney, Senator Warren called A.D. Walton, the United States Attorney, to discuss the appointment and to suggest that Walton consider that "young fellow who introduced me out in Pine Bluffs." After Walton determined that it was I who introduced Senator Warren, he called me. He told me that the Senator didn't know whether I was a lawyer and didn't know my last name, but that if I wanted the Assistant United States Attorney position, I could have the job. I held that position from 1929 until 1933.

I handled many Prohibition cases while I was Assistant United States Attorney, including the famous "Casper Conspiracy" case. The Mayor, Chief of Police, Sheriff and thirty-four other Casper citizens were indicted and tried for conspiring to give a monopoly to two large illegal distilleries in Casper. For this they were paid more than $360,000. This ring was so well organized they even set up a bootlegger's warning system, which involved a system of signal lights set up on the courthouse roof. The Sheriff would turn on the red light if the federal prohibition officer was in Casper, to warn the bootleggers to hold all deliveries. Ed Reed, who kept the books for the ring, was my witness at the trial. I also prosecuted many other bootlegging cases and cases involving the operation of stills, as well as cases involving simple possession of alcohol.

I remember Judge Kennedy was opposed to Prohibition, but you couldn't tell it when you were trying a case before him. If defend-

ants pled guilty to possession of alcohol he would fine them two or three hundred dollars, but if they stood trial and took the time of the court they would go to jail for thirty to sixty days. Defendants all knew this, so Judge Kennedy got a lot of guilty pleas. Some of Wyoming's most colorful lawyers were those defending the leading defendants in these Prohibition cases. The "bigshots," of course, employed the best lawyers, and the "Casper Conspiracy" defendants had retained them all. I was the sole prosecutor for the government. Judge Kennedy kept the jury out for two weeks. The first ballot was 11–1 for conviction, but ultimately all defendants were acquitted. Even so, they were disgraced and their reputations in Wyoming ruined.

There is a tendency to compare Prohibition cases to drug enforcement trials. However, in my opinion there is simply no comparison between Prohibition years and the drug problems we face today. Will Rogers said that Prohibition was better than no liquor at all. People drank then just like they drink now. But this drug problem is the greatest problem in my lifetime, and they don't have the answer to it yet. The price of drugs simply goes up as the organization and efforts to curtail it increase.

I also served four years as Wyoming Attorney General, from 1939 to 1943. I was the youngest Attorney General ever appointed in the State at that time. Then there were only three members of the attorney general staff, compared to more than forty today. I have vivid memories of two cases I argued as Wyoming Attorney General before the United States Supreme Court—*Nebraska v. Wyoming*[11] and *Wyoming v. Colorado*,[12] and both water law cases. *Nebraska v. Wyoming* was one of the most complex and voluminous cases ever heard by the Supreme Court. The case went to a master first, and then his decision was reviewed by the Supreme Court. It resolved the two states' conflicting claims to the North Platte River. The case produced 43,000 pages of testimony and was in the Court for six to seven years. Nebraska's evidence alone weighed in at over one ton. One of the reporters in the case (Whittington) died before it was decided.

Then there was *Wyoming v. Colorado*, which arose over competing claims to the Laramie River. Colorado was entitled to 12,500 second feet of water, but was taking 30,000. I remember Justice Douglas asked me what a "second foot" was. "Second foot" or "c.f.s." refers to the rate of flow, measured in cubic feet, of water passing a given point in a stream in a second. I explained this to Justice Douglas, and he said that he thought that was what the term meant. Justice Douglas came from a part of the country—Washington State—where it is much less crucial to be able to measure and apportion the available water. I always found water law to be (speaking figuratively) a rather dry subject. So many engineers and surveyors. But I enjoyed my experiences before the Supreme Court; they were very kind and gentle.

1943 I entered the United States Army and was assigned to the Allied Military government in North Africa. I was later transferred to Italy. Hitler and Mussolini had closed all of the civilian courts during World War II. General Mark Clark desired that the civilian courts be re-established as soon as the Germans were driven north. I had the pleasure of supervising the process of re-establishing the Italian courts in southern Italy. This was a fascinating and educational experience. No juries were permitted in the new court system. Three judges tried all cases, except minor ones, and they rendered their decision following the presentation of the evidence. These trials took less than a day. A comparable case in the United States now would be in trial a week to ten days.

In 1955 I was nominated by President Dwight D. Eisenhower to replace the retiring Judge Kennedy on the federal district court in Wyoming. Senator Frank Barrett, father of Judge Jim Barrett of the Tenth Circuit Court of Appeals, moved my nomination in the Senate. For reasons still unknown, my commission was sent to Omaha rather than Cheyenne, and then had to be sent back to Washington, D.C. and re-delivered, which delayed my receiving it by a week. As a result, I was sworn in on November 7th instead of November 1st, the date that would have marked Judge Kennedy's completion of thirty-three full years on the federal bench. In the course of my thirty-four years as judge, I have held court in every state of the Tenth Circuit, as well as in Louisiana, California, New York, Florida and Puerto Rico. In my early days on the court, I sat in Denver almost as often as in Cheyenne, because Colorado had only one federal district judge.

Of all of the cases I have heard while serving on the federal bench, the *Black Fourteen*[13] case received by far the most publicity. In fact, a Catholic priest with whom I was acquainted sent me an article about the case, which he had clipped from the *London Times*. The case stemmed from the request of fourteen Wyoming football players to wear black arm bands when playing the Brigham Young University team, to protest the Mormon Church's policies concerning blacks. The players based their suit on *Tinker v. Des Moines School District*[14] in which the Supreme Court upheld three public school students' right under the first amendment to wear black arm bands in a passive, nondisruptive protest to the federal government's Vietnam policy. The *Black Fourteen* case was unique, however, because it involved both first amendment free speech and entanglement concerns, although the players contended their suit was based upon racial discrimination, rather than the religious beliefs of the Mormon Church.

I remember holding an evidentiary hearing that all of the players attended. I suggested they sit in the jury box so they could be close to the proceedings. Fourteen chairs and they filled them all. Early in the case, the State of Wyoming was represented by Attorney General Jim Barrett, later Judge Barrett. Later on in the case, he was replaced by Attorney General Clarence Brimmer, later Judge Brimmer of the Federal District Court for the District of Wyoming. Judge Barrett says that every time he looked over to the jury box he could see what was going to happen to Wyoming's football team. In 1968 the team had played in the Sugar Bowl and everyone expected the team to be even better in 1969. He knew these fourteen players were the nucleus of the team, and all he could think about was that if the team lost these players, it was going to "go to pot." And, as it turned out, Wyoming won only four games that year.

The State's position in the case was that it could not be a party to permitting its representatives (its team) or the use of its facilities to protest anyone's religious beliefs. And that is how the case was tried. I agreed that because the University is a state school, such a protest against any religious belief was improper, and I granted summary judgment to the State on that basis. The Tenth Circuit upheld the summary judgment on behalf of the State, but returned the case because of some dispute of fact with respect to another aspect of the litigation. Judge Brimmer argued the case on remand, and in the end the State won. It was an interesting case, and rare to see free speech claims pitted against entanglement concerns.

The case reminded me of how much times have changed since my own years at the University of Oklahoma. The Universities of Oklahoma and Kansas in the early twenties had a written agreement that Kansas would not use its only black player when the team was playing in Norman, Oklahoma. The Mason-Dixon line divided Kansas and Oklahoma then, and there were no black athletes in any school south of the line until 1954. This is just one example of the many ways in which I've seen the world and the law develop in the course of my lifetime.

Indeed, during my tenure on the federal bench, there have been radical change in both court procedures and in the types of litigation brought in the United States District Court. For example, until the 1940's there was no paid federal court reporter. If a lawyer wanted his case reported, he hired and paid a reporter himself. Herbert Hulse, who currently lives in Cheyenne, was the first paid court reporter in the District of Wyoming. He was first assigned to Judge Kennedy, and then to state judges, Sam Thompson and Al Pearson. The earliest reporters recorded the proceeding in longhand; later they used Gregg shorthand. When I was in the United States Attorney's office during Prohibition years, there were many trials but few reported trials. Consequently, there were scarcely any appeals. Today we have a reporter even for motion hearings. At least partially as a result of this, it is much easier for counsel to bring an appeal.

The principal changes in the types of litigation brought in federal court have involved criminal cases. Prisoners, particularly, are constantly filing petitions for writs of habeas corpus or filing suits under the civil rights statutes. It was during Judge Lewis' tenure as chief judge of the Tenth Circuit that the court began allowing convicts to bring these appeals in forma pauperis, in spite of the federal statute that requires, as a prerequisite, a certificate of probable cause issued by the trial court. We used to dismiss these petitions and then deny the certificates. But Judge Lewis' view was that the circuit court would have to reach the merits in reviewing the denial of the certificate of probable cause, so to avoid that extra step, he made the administrative decision to allow these appeals. Now the appellate court decides the merits of these cases. Thousands of pages have been written—most of them a waste of the court's time. However, occasionally the courts decide that relief is warranted; for example, the Osborn[15] case heard by Judge Brimmer, which involve an ineffective assistance of counsel claim. But that is a rare case. I have never released a prisoner on a writ of habeas corpus or granted a prisoner's civil rights action. Nevertheless, much of the court's time is devoted to these cases. We also get many petitions complaining about conditions inside the prisons. I must admit, the prisons do not operate like the Brown Palace Hotel, but we have to be realistic. These are jails, not hotels.

We hear many other frivolous suits now, too. Recently, for example, I heard a motion to dismiss by the State of Wyoming and the police department of a Wyoming town in a suit brought by a person who was arrested for failure to have a driver's license. He claimed that he had a right as a taxpayer to

use state highways, and he was suing the State for $100,000 in damages. This is typical of many suits being brought in federal courts in Wyoming and throughout the nation today.

I have also seen tremendous changes in court procedures. For instance, the rules for the federal district courts used to be about ten pages long. I wrote my own rules for my court, in fact. How, there are volumes of rules. In my opinion, the system is more complicated than it should be. Jury selection has also changed dramatically. Until 1964 we had a system that I thought worked extremely well. I appointed a reputable person in each community to submit names of people he or she knew and considered to be good juror candidates. From this pool of names venires were selected, and then the parties in each case had an opportunity, just as they do now, to review the venire and select a jury. These so-called "Blue-Ribbon" juries were intelligent, responsible and fair. But we had to abandon the system when Congress enacted standard jury selection procedures for federal courts.

A LOVE FOR WYOMING

As for Wyoming lawyers, it's been my experience that they conduct themselves in a different manner than do lawyers in most other states where I've held court. They are orderly, courteous, well prepared and efficient. I've never had a Wyoming lawyer get "out of hand" in my court.

Wyoming is a great state. I felt that way when I arrived, and I feel even more strongly about it now, sixty-five years later. Wyoming has certainly been kind to me.

FOOTNOTES

[1] Thomson, *History of Territorial Federal Judges for the Territory of Wyoming: 1869–1880*, 17 LAND & WATER L. REV. 567, 614 (1982).

[2] Presumably he resigned to earn more money in private law practice. Judicial salaries were small—$3,000 at the time—and Justice Van Devanter had a family to support. *Id.*

[3] Thomas Blake Kennedy served thirty-four years as the lone federal judge in Wyoming and was the predecessor of Ewing Kerr. He moved to Wyoming from Michigan and earned fame as an attorney of his defense of Tom Horn. R. Thomson, *History of Territorial Federal Judges for the Territory of Wyoming 1868–1890 and United States District Judges for the District of Wyoming 1890–1980*, 81–109 (unpublished manuscript).

[4] Wyoming v. Colorado, 259 U.S. 419 (1922).

[5] In Memoriam—Honorable Ralph Kimball—1878–1989. Proceedings before the Wyoming Supreme Court, December 15, 1959.

[6] *See supra* note 3.

[7] At that time Wyoming was in the Eighth Circuit, and the circuit seat was in Omaha.

[8] Thomson, *supra* note 1, at 582.

[9] Brown, Transition from Territorial to State Court (unpublished manuscript).

[10] The Corlett School was named for a senior partner of Judge Lacey and Justice Van Devanter. It still exists in Cheyenne, in a different building, but at the same location.

[11] 325 U.S. 589 (1945).

[12] 309 U.S. 627 (1940).

[13] Williams v. Eaton, 310 F. Supp. 1342 (D.C. Wyo. 1979).

[14] 393 U.S. 503 (1969).

[15] Osborn v. Schillinger, 639 F. Supp. 610 (D.C. Wyo. 1986).

Mr. WALLOP. Mr. President, I am pleased to join with my colleague from Wyoming, Senator SIMPSON, in sponsoring legislation to name the U.S. courthouse in Casper, WY, after the Honorable Ewing T. Kerr, senior Federal district judge, for the District of Wyoming. Judge Kerr's service to America's judicial branch has been outstanding, and his civic and charitable contributions to the State of Wyoming have been enormous. He is richly deserving of this honor.

I am not a lawyer myself but let me relate some examples of the high regard with which those who are in the judicial system hold this remarkable gentleman. Judge Brimmer, Chief Judge of the U.S. District Court, District of Wyoming, says that naming the courthouse in Casper in honor of Judge Kerr in recognition of the great contribution that he has made to the justice system in Wyoming "would meet with the approbation of the entire citizenry of this State."

Judge James Barrett of the U.S. Circuit Court says "I know of no person more deserving of plaudits and commendations than Judge Kerr."

U.S District Court Judge for Wyoming, Judge Alan B. Johnson describes Judge Kerr's character thusly:

Judge Kerr is the image of the ideal qualities to be possessed by a Federal trial judge. Rather than serving in an isolated, ivory-tower manner, his judicial service has been vibrant and deeply involved in the issues that have shaped Wyoming's history. He has taken a personal interest in the young lawyer, and all who have come before him have benefited from his wisdom and common sense so freely shared. If the citizens of this State hold the courts and members of the bar in higher regard than that in existing in other places, it is certain that has occurred because of Judge Kerr.

Finally, Judge Wade Brorby of the U.S. Circuit Court says the following:

Judge Kerr has made a remarkable contribution to the administration of justice. He has been an exemplary judge with long and distinguished service, and he is truly a compassionate, thoughtful and dedicated person. There exist but few persons who are deserving of such an honor. Judge Kerr certainly belongs to this select group.

I can think of no higher honor than to have one's peers offer such praise, Mr. President, and similar sentiments are echoed by lawyers and citizens from every walk of life all throughout my home State.

When Judge Kerr was appointed to the Federal bench by President Eisenhower in 1955 he was only the third Federal judge to be appointed since Wyoming's admission into the Union and he helped guide the States through some tumultuous times over the next several decades. He remained the only sitting Federal judge in Wyoming until he took senior status in 1975 and continues to hear cases today. In all those years he has been an eminently fair and impartial judge, an extremely efficient administrator of the justice system, and a very patient and kind man.

But his contributions are not just limited to the judicial realm. He served our State first as assistant U.S. attorney and then as Wyoming's attorney general before being appointed to the court. Moreover, the Republican State Committee benefited from his leadership at the helm of that organization from 1945 until 1954. Judge Kerr was also generous with his time when it came to his community as he was active in various civic and charitable organizations.

His has been a very steady and nurturing presence for the State of Wyoming over many years, and I can think of no one more deserving of this honor. As I stated at the beginning, I am not a lawyer, though I did serve on the Senate Judiciary Committee. With this mixed background, I can appreciate the achievements and regard which Judge Kerr has accomplished through his service on the Federal court. But, my admiration is based just as much on Judge Kerr as a builder of our great State of Wyoming. I would ask that an article written by Judge Kerr celebrating Wyoming's centennial be included in the RECORD at this point.

I strongly recommend that my Senate colleagues expeditiously approve this measure.

By Mr. CRANSTON:

S. 1890. A bill to require the President to investigate allegations that China is exporting products made with forced labor, and for other purposes; to the Committee on Finance.

FORCED LABOR PRODUCTS INVESTIGATION ACT

• Mr. CRANSTON. Mr. President, I rise to introduce the Prison Labor Products Investigation Act, requiring the President of the United States to investigate allegations that China is exporting products made with forced labor.

I do so, Mr. President, because I have grown weary of the administration's foot dragging on this issue.

Two years have passed since the Customs Service began its most recent investigation of forced labor imports from China.

While the Customs Service slowly and seemingly reluctantly investigates allegations that China is exporting forced labor goods to the United States, countless numbers of Chinese citizens continue to suffer under a system of near slavery—a system which the United States abets by buying the products of that slavery.

This practice must end.

The importation of forced labor goods is illegal. It also is immoral. Yet little is being done about it.

To date, not a single individual or company has been prosecuted under the McKinley Act or the Smoot-Hawley Act for illegally importing forced labor goods from China. That is a matter of record.

Yet there is evidence from credible witnesses who claim that forced labor exists in China, that forced labor goods are exported from China, that they are imported into the United States, and that the Chinese Government, which relies upon income from these products, allegedly participates in this nefarious practice. Mr. Harry Wu, a political prisoner for 19 years, returned to China to gather evidence which he pre-

sented to the Subcommittee on Asian Affairs on October 17, 1991.

What Mr. Wu tells us, and shows by way of photographs and film footage he secretly took in China is chilling.

Mr. Wu claims, and his photographs show, that Chinese prison laborers are forced to stand fully naked in vats of toxic chemicals to cure sheep skins for car seat covers. He presents filmed footage of a Chinese prison official saying that if the quality of an exported prison product does not meet the buyer's expectation, the prisoners will be punished and beaten. He films prison officials conspiratorially asking that he not tell anyone that the goods to be exported to the United States come from forced labor because that is against U.S. law. Mr. Wu presents filmed evidence of a Chinese prison official admitting to working with companies in Hong Kong and elsewhere to disguise the source of the exported goods.

Finally, Mr. Wu videotaped a 1988 certificate from the Chinese Ministry of Foreign Economic Relations authorizing one camp to produce goods for export. This flies in the face of the Ministry of Foreign Economic Relations and Trade's repeated assertions that prison enterprises are not authorized to export goods.

But Mr. Wu's is not the only evidence of the alleged acts, Mr. President, we have a copy of a letter from a Chinese official to Volvo Corp. In it, a representative of the Chinese Reform of Criminals bureaus offers cheap and reliable labor to Volvo Corp. I ask that this letter appear in the RECORD at the end of my statement.

Finally, the investigative television program "60 Minutes," recently cited the Chinese Law Yearbook, an official publication, which said that in 1988 the income from the exportation of forced prison goods had risen 21 percent from the previous year.

The exportation of forced labor seems to be an ongoing and very lucrative business for the Chinese Government. At least 90 different products are sold internationally for millions of dollars. But it is not the dollar amount that is relevant here. Rather it is the fact that unwitting consumers may be buying and using products made by forced labor. Without our knowledge, we may be wearing or using goods made by the very people who were imprisoned for fighting for democracy in Tiananmen Square.

I think my colleagues will agree with me that that is a very distressing thought indeed.

The administration is charged with protecting U.S. consumers from these goods. The administration is responsible for eradicating the market for these products of suffering. Yet it is the same administration that was unwilling to deny most-favored-nation-trading status after the suppression at Tiananmen Square.

My bill requires that the administration fully investigate the allegations raised by Mr. Wu and others and report to the Congress. If the President finds that there is a preponderance of evidence that Chinese forced labor goods are being imported into the United States, then the bill requires the following of the President:

A report on the progress made in negotiating a memorandum of understanding with China on ending the exportation of forced labor goods to the United States;

Information regarding the steps the Chinese Government has taken to identify and take actions against companies exporting goods made with forced labor to the United States; and

Information regarding the action the President will take to end the importation into the United States of Chinese goods made with forced labor.

To be fair, the Customs Service of late has withheld "certain hand tools and steel products made by the Shanghai Laodong Machinery Plant and the Shanghai Laodong Steel Pipe Works." Upon questioning, Mr. DeVaughn of the Customs Service admitted that the crackdown was in reaction to the evidence Mr. Wu had provided.

Is that what it is going to take to make the Customs Service move, Mr. President? Is Mr. Wu or someone equally courageous going to have to bring evidence to the Customs Service on a ongoing basis to get some action?

The U.S. Customs Service, with all of its resources, and other agencies at its disposal should be able to investigate these allegations without having to rely upon an individual risking his freedom to gather evidence.

This game of "show me" is equally bad with Chinese officials, Mr. President. In a New York Times article of Friday, October 26, 1991, a spokesman for the Chinese Ministry of Foreign Economic Relations and Trade said, and I quote, "As long as the U.S. side can give the name of such factories, we will deal with them sternly." I ask unanimous consent that this article be printed in the RECORD at the conclusion of my comments.

This is ridiculous. The United States Customs Service depends upon private citizens to bring it evidence and the Chinese Government depends upon the United States to bring it evidence.

It is time to end the games.

Chinese prisoners allegedly are being forced to toil under the most abysmal of conditions. Prisoners are beaten and made to live on little more than a single bowl of rice and water per day. These people have little hope of freedom unless the most powerful nation in the world stands up and says, "Enough."

It is partly out of frustration with the Chinese Government and partly out of frustration with the Customs Service, State Department, and administration that I introduce this bill today.

I ask unanimous consent that a section-by-section analysis of this bill along with the text of the bill be printed in the RECORD. I encourage my colleagues to consider this bill promptly and positively.

What this bill does, Mr. President, is force the administration to investigate and report on the problem of forced labor goods entering the United States. If the allegations raised are valid, then this bill requires that the President report on what he proposes to do to end this horrid practice.

It is the least we can do to get to the bottom of this worrisome problem.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1890

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Forced Labor Products Investigation Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) There are pervasive allegations that China is exporting to the United States goods made with forced labor.

(2) Witnesses, including Members of Congress, have stated that forced laborers are engaged in producing goods for export to the United States and have, in one instance, film supporting their claims.

(3) Letters, allegedly written by Chinese prison officials offering inexpensive Chinese forced labor, have been received by manufacturers outside China.

(4) People who have escaped from Chinese forced labor camps have given specific statements regarding China's forced labor system and the exportation of goods made with forced labor.

(5) Estimates vary on the number of people detained, but according to the July 1990 General Accounting Office Report, the Department of State estimates that as many as 2 million detainees are held in Chinese forced labor camps.

(6) The July 1990 General Accounting Office Report states that many prisoners are detained for employment in the camps even after their sentences expire. That report says that "Some individuals who have been released from labor reform camps are forbidden to return to their home communities", which amounts to "internal exile", according to the Country Reports on Human Rights Practices for 1989 produced by the Department of State.

(7) It is generally accepted that the products of Chinese forced labor camps are exported to the United States through exporters in Hong Kong and elsewhere who may change labels on goods or otherwise try to disguise forced labor-made goods.

(8) It has been illegal to import into the United States goods made with forced labor since the passage of the McKinley Act. This principle was later expanded in the Smoot-Hawley Act (the Tariff Act of 1930).

(9) The Tariff Act of 1930 specifically charges the Secretary of the Treasury, under whose auspices the Customs Service operates, to prescribe such regulations as may be necessary to enforce the McKinley Act and the Smoot-Hawley Act.

(10) The United States Customs Service has been investigating the exportation of forced

labor-made goods to the United States at least since July 1990.

(11) Customs Service investigators have at their disposal the resources, equipment, and cooperation of other agencies necessary to investigate exhaustively the allegations raised regarding the importation into the United States of Chinese forced labor-made goods. Nonetheless, the Customs Service has yet to find conclusive evidence of Chinese forced labor-made goods entering the United States.

(b) PURPOSE.—It is the purpose of this Act to require the President to seek the cooperation of other countries and to utilize the resources of such agencies as the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of State, the Customs Service, and the United States International Trade Commission to investigate exhaustively the importation of Chinese forced labor-made goods into the United States.

SEC. 3. INVESTIGATION.

The President is authorized and directed to use every means available, to seek the cooperation of other countries to utilize the resources of the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of State, the United States International Trade Commission, the Customs Service, and any other appropriate Federal agency, to investigate and determine whether Chinese forced labor-made goods are being imported into the United States.

SEC. 4. REPORT.

Not later than 1 year after the date of the enactment of this Act, the President shall report in writing to the Congress the findings of the investigation conducted pursuant to section 3. Such findings shall include a determination (based on a preponderance of the evidence) as to whether Chinese forced labor-made goods are being imported into the United States.

SEC. 5. CONTENTS OF REPORT.

(a) IN GENERAL.—The report submitted under section 4 shall include the following:

(1) A list of the United States agencies and departments which cooperated in the investigation and in preparing the report.

(2) The number of Customs Service investigators and other investigators assigned to the investigation.

(3) The number of hours spent on the investigation by the participating agencies.

(4) All organizations, international and otherwise, interviewed or questioned in connection with the investigation.

(5) The names of all individuals, including foreign nationals, interviewed or questioned in connection with the investigation, unless disclosure' of such name would be contrary to national security or an individual requests anonymity.

(b) FINDING OF EXPORTATION OF GOODS MADE WITH FORCED LABOR.—If the President finds that there is a preponderance of evidence that Chinese forced labor-made goods are being imported into the United States, the report shall also include the following:

(1) Information regarding the progress the United States has made in negotiating a memorandum of understanding with Chinese to cease the use of forced labor in production of goods exported to the United States.

(2) Information regarding the steps the Chinese Government has taken to identify and take action against companies exporting goods made with forced labor.

(3) Information regarding the action the President will take to end the importation into the United States of Chinese goods made with forced labor.

SEC. 6. FORCED LABOR DEFINED.

For purposes of this Act, the term "forced labor" has the meaning given to such term by section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

SECTION BY SECTION OF FORCED LABOR BILL INTRODUCED BY SENATOR ALAN CRANSTON

Section 1. Sets forth Short Title.

Section 2. Set forth Findings and Purpose.

Section 3. Directs the President, in cooperation with all agencies necessary, to investigate the allegations that forced labor goods are imported into the U.S. If the President is unable to come to a definitive conclusion, a conclusion based upon the preponderance of the evidence, is to be drawn.

Section 4. Requires that within one year of the enactment of this legislation the President must report on its findings to the Congress.

Section 5. Sets forth Contents of Report.

(a) Sets forth the information to be provided in the mandated report.

(b) Provides that if the President concludes that forced labor goods are being imported into the U.S., then the report submitted must also include what progress the United States has made in negotiating a memorandum of understanding with China to end the use of forced labor in the production of goods exported to the United States; information regarding the steps the Chinese Government has taken to identify and take action against companies exporting goods made with forced labor; information regarding the action the President will take to end the importation into the U.S. of Chinese goods made with forced labor.

Section 6. Defines the term "forced labor."

CHINTER, BELGIUM,
Brussels, July 3, 1989.

AB VOLVO,
Goteborg, Sweden.

DEAR SIRS: We are representing Chinese Reform of Criminals bureaus of all the provinces along the coast of China. We heard that your esteemed Firm has intention to establish factories in Asia.

All the Bureaux can provide many existing factories for your choice on rent basis. They have also many lands to rent. Besides they can provide large numbers of criminals who received already basic technical training as very cheap labours on lease basis. The number of labours and the security are fully guaranteed.

We are ready to show you all the relative information. If you are interested in our proposal, please don't hesitate to call upon us.

Looking forward to hear from you, we remain,

Truly yours,

CHARLES H.J. CHI,
General Manager.

[From the New York Times, Oct. 26, 1991]

BEIJING MOVES TO HALT PRISON-MADE EXPORTS

BEIJING, October 24.—In an apparent move to counter United States criticism, the Chinese government announced today that it had dismissed a factory official and warned another about the export of goods made with prison labor.

The Government's official position has been that prisons are not allowed to export their products. But foreign news organizations have recently reported cases in which goods made in Chinese prisons were sold for export. China's failure to halt the practice has become a contentious issue between the two countries, with United States blocking the entry of some goods.

Huang Yuefeng, a spokesman for the Chinese Ministry of Foreign Economic Relations and Trade, said the prison system had dismissed Wan Shaohua, a department chief at the Qinghai Leather and Wool Bedding and garment Factory. A "serious warning" was given to the factory's director, Gao Hongzhou, Mr. Huang said.

"As long as the U.S. side can give the name of such factories, we will deal with them sternly," he said.

But he said no decision had been made about actions against the Shanghai Laodong machinery Plant, which has been reported to use prison labor to make wrenches and pipes. American customs officials have recently banned that company's products from the United States, where businesses are prohibited from buying foreign goods made by prison labor.

Most Chinese prisons have factories or farms and require the inmates to work. The Justice and Trade ministries issued a statement this month reiterating the ban on exports of prison-made goods and promising to punish violators severely.•

By Mr. THURMOND (for himself and Mr. HOLLINGS):

S. 1891. A bill to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes; ordered to be placed on the calendar.

WAIVER OF CERTAIN RECOVERY REQUIREMENTS

Mr. THURMOND. Mr. President, I rise today along with my fellow colleague Senator HOLLINGS, to introduce legislation which will permit the Secretary of Health and Human Services to waive certain Federal recovery requirements regarding the construction or remodeling of community mental health facilities.

Under section 2713 of the Public Health Service Act—42 U.S.C. 300aaa-12—the Federal Government may recover certain Federal construction funds used in building a community mental health center in two situations. In the first situation, the Federal Government may recover funds if at any time within a 20-year period after a center is constructed, the center is either sold or transferred. In the second case, the Federal Government may recover funds if a center ceases to be used by a community mental health center in the provision of comprehensive mental health services.

In the latter situation, the Secretary of Health and Human Services may waive the recovery rights of the Federal Government (section 1713(d) of the Public Health Service Act, 42 U.S.C. 300aaa-12(d)) if the Secretary determines that there is good cause for waiving such rights.

By way of background, the waiver authority was included as part of the 1985 amendments to the Public Health Service Act. Unfortunately, the legislative intent of this provision is not entirely clear. The legislative history does not clarify the reason for authorizing the waiver authority in the second situation—where a facility ceases

to be used as a mental health facility—and not in the first, where there is a sale or transfer of property. Nevertheless, it is reasonable to assume that one of the underlying purposes for the Federal right of recovery is to ensure that comprehensive mental health services are provided to the community for 20 years.

The Office of General Counsel at the National Institute of Mental Health [NIMH] has construed the waiver provision narrowly. Even though a facility may cease to be used as a mental health center, if a sale or transfer happens to be involved, no waiver would be available. In effect, the interpretation given by NIMH is that no waiver can be obtained where there is a sale or transfer of property, even though the new mental health center is larger, provides improved services, or is in a better location than the former facility. Surely this anomalous result was not intended.

Because of my concern with these unforeseen and unfortunate consequences, I am today introducing a bill which would permit a waiver where a sale or transfer of property is involved. This does not mandate a waiver. Rather, it simply gives the Secretary of Health and Human Services authority to grant a waiver not only where a facility ceases to provide mental health services—as under current law—but also where a sale or transfer of property is involved.

Mr. President, by way of example, the Coastal Empire Mental Health Center in Beaufort, SC, desires to cease operations at its current location, and move to another nearby site provided by Beaufort Memorial Hospital, a local public hospital. The old site would become part of a new $23 million expansion of the hospital, which provides a large volume of free and below-cost medical care to the residents of the five counties surrounding Beaufort. On the new site an expanded and vastly improved mental health center would be constructed.

All the county and State governing bodies involved or affected by this proposal strongly support it, but because of the interpretation of NIMH on sales or transfers, the mental health center is not eligible for even consideration of a waiver. This is very disturbing, particularly where the equities and reasons for moving to a new facility are overwhelming.

Accordingly, it is my hope that this legislation will prevent this and other such anomalous situations in the future. I ask unanimous consent that the text of this bill appear immediately after my remarks in the RECORD, and I further ask unanimous consent that the bill be held at the desk.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1891

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF CERTAIN RECOVERY REQUIREMENTS.

Section 2713(d) of the Public Health Service act (42 U.S.C. 300aaa-12(d)) is amended by striking out "(a)(2)" and inserting in lieu thereof "(a)".

ADDITIONAL COSPONSORS

S. 377

At the request of Mrs. KASSEBAUM, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 377, a bill to amend the International Air Transportation Competition Act of 1979.

S. 474

At the request of Mr. DECONCINI, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 474, a bill to prohibit sports gambling under State law.

S. 914

At the request of Mr. GLENN, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 914, a bill to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 1128

At the request of Mr. GLENN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1128, a bill to impose sanctions against foreign persons and United States persons that assist foreign countries in acquiring a nuclear explosive device or unsafeguarded special nuclear material, and for other purposes.

S. 1159

At the request of Mr. GORE, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 1159, a bill to provide for the labeling or marking of tropical wood and tropical wood products sold in the United States.

S. 1219

At the request of Mr. BAUCUS, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 1219, a bill to enhance the conservation of exotic wild birds.

S. 1257

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1257, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real estate activities under the limitations on losses from passive activities.

S. 1357

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1357, a bill to amend the Internal Revenue Code of 1986 to permanently extend the treatment of certain qualified small issue bonds.

S. 1398

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1398, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from certain rules for determining contributions in aid of construction.

S. 1426

At the request of Mr. BUMPERS, the names of the Senator from Tennessee [Mr. SASSER], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 1426, a bill to authorize the Small Business Administration to conduct a demonstration program to enhance the economic opportunities of startup, newly established, and growing small business concerns by providing loans and technical assistance through intermediaries.

S. 1617

At the request of Mr. MCCAIN, his name was added as a cosponsor of S. 1617, a bill to amend the Internal Revenue Code of 1986 to provide protection for taxpayers, and for other purposes.

S. 1641

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1641, a bill to amend section 468A of the Internal Revenue Code of 1986 with respect to deductions for decommissioning costs of nuclear powerplants.

S. 1647

At the request of Mr. BAUCUS, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 1647, a bill to amend the Internal Revenue Code of 1986 to provide that the deduction for State and local income and franchise taxes shall not be allocated to foreign source income.

S. 1648

At the request of Mr. MCCAIN, the names of the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of S. 1648, a bill to amend title VII of the Public Health Service Act to reauthorize and expand provisions relating to area health education centers, in order to establish a Federal-State partnership, and for other purposes.

S. 1691

At the request of Mr. DIXON, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 1691, a bill to amend title 18, United States Code, to govern participation of Federal Prison Industries in Federal procurements, and for other purposes.

S. 1793

At the request of Mr. D'AMATO, the names of the Senator from Utah [Mr. HATCH], the Senator from Illinois [Mr. DIXON], the Senator from North Carolina [Mr. HELMS], the Senator from Idaho [Mr. SYMMS], the Senator from

Louisiana [Mr. BREAUX], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 1793, a bill to restrict United States assistance for Serbia or any part of Yugoslavia controlled by Serbia until certain conditions are met, and for other purposes.

S. 1810

At the request of Mr. DURENBERGER, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the Medicare Program, and for other purposes.

S. 1826

At the request of Mr. DASCHLE, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 1826, a bill to amend the Internal Revenue Code of 1986 to encourage parity giving in order to increase prices to farmers while assisting in feeding the starving of the world.

S. 1842

At the request of Mr. DASCHLE, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 1842, a bill to amend title XIX of the Social Security Act to provide for Medicaid coverage of all certified nurse practitioners and clinical nurse specialists services.

SENATE JOINT RESOLUTION 176

At the request of Mr. DIXON, the names of the Senator from Arkansas [Mr. BUMPERS], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 176, a joint resolution to designate March 19, 1992, as "National Women in Agriculture Day."

SENATE JOINT RESOLUTION 188

At the request of Mr. KERREY, his name was added as a cosponsor of Senate Joint Resolution 188, a joint resolution designating November 1991, as "National Red Ribbon Month."

SENATE JOINT RESOLUTION 198

At the request of Mr. AKAKA, the names of the Senator from Oklahoma [Mr. BOREN], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Arizona [Mr. MCCAIN] were added as cosponsors of Senate Joint Resolution 198, a joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

SENATE JOINT RESOLUTION 216

At the request of Mr. GLENN, the names of the Senator from Rhode Island [Mr. PELL] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Joint Resolution 216, a joint resolution requiring a report under the Nuclear Non-Proliferation Act of 1978 on United States efforts to strengthen safeguards of the International Atomic Energy Agency.

SENATE JOINT RESOLUTION 217

At the request of Mr. HATFIELD, the name of the Senator from Indiana [Mr. LUGAR] was withdrawn as a cosponsor of Senate Joint Resolution 217, a joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian."

SENATE CONCURRENT RESOLUTION 65

At the request of Mr. DECONCINI, the names of the Senator from Utah [Mr. HATCH] and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of Senate Concurrent Resolution 65, a concurrent resolution to express the sense of the Congress that the President should recognize Ukraine's independence.

SENATE CONCURRENT RESOLUTION 69

At the request of Mr. CRANSTON, the names of the Senator from Idaho [Mr. CRAIG] and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Concurrent Resolution 69, a concurrent resolution concerning freedom of emigration and travel for Syrian Jews.

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE RESOLUTION 201

At the request of Mr. DANFORTH, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Tennessee [Mr. GORE] were added as cosponsors of Senate Resolution 201, a resolution to express the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

SENATE RESOLUTION 204

At the request of Mr. D'AMATO, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of Senate Resolution 204, a resolution expressing the sense of the Senate that the United States should pursue discussions at the upcoming Middle East Peace Conference regarding the Syrian connection to terrorism.

SENATE RESOLUTION 210

At the request of Mr. LEVIN, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of Senate Resolution 210, a resolution relating to violence in Yugoslavia.

AMENDMENT NO. 1274

At the request of Mr. DANFORTH, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of amendment No. 1274 proposed to S. 1745, a bill to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

SENATE RESOLUTION 211—REGARDING HUMAN RIGHTS ABUSES IN CHINA AGAINST WRITERS AND JOURNALISTS

Mr. SASSER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 211

Whereas Asia Watch, the Committee to Protect Journalists, the Committee to End the Chinese Gulag, and the Nieman Foundation for Journalism at Harvard University have documented the imprisonment of numerous Chinese writers and journalists by the Government of the People's Republic of China since the Tiananmen Square Massacre;

Whereas the Government of China is responsible for the harassment of writers and journalists and continues to imprison writers and journalists solely because of their political views;

Whereas the Government of China has closed or suspended many publications;

Whereas, in July 1989, the Government of China named journalist Dai Qing an "instigator of turmoil" and imprisoned her until May 1990, for her statements against the Government's actions in the Tiananmen Square Massacre;

Whereas Dai Qing has published a series of articles on Chinese women which have now been denounced and banned by the Government of China;

Whereas Dai Qing has also published one of the most courageous critiques of the All-China Women's Federation, which is an organization controlled by the Chinese Party;

Whereas Dai Qing peacefully engaged in her internationally recognized human right of free expression;

Whereas Dai Qing remains under constant police surveillance;

Whereas Dai Qing has been awarded a Nieman Fellowship by Harvard University, but has been refused a passport by the Government of China; and

Whereas the Government of China has an international responsibility to respect and uphold the rights of all of its citizens: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should—

(1) communicate directly to the leadership of the Government of the People's Republic of China the urgent concern of the Congress and the citizens of the United States for the rights of all political prisoners in China; and

(2) urge the Government of the People's Republic of China to recognize the right of Dai Qing and all Chinese writers and journalists to free expression and travel.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

AMENDMENTS SUBMITTED

CIVIL RIGHTS ACT OF 1991

DOLE AMENDMENT NOS. 1277 AND 1278

Mr. DOLE proposed two amendments to amendment No. 1274 proposed by Mr. DANFORTH to the bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of international employment dis-

crimination, to clarify provisions involving disparate impact actions, and for other purposes, as follows:

AMENDMENT NO. 1277

At the appropriate place insert the following new section:

SEC. . TECHNICAL ASSISTANCE TRAINING INSTITUTE.

(a) TECHNICAL ASSISTANCE.—Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4) is amended by adding at the end the following new subsection:

"(j)(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this title shall not be excused from compliance with the requirements of this title because of any failure to receive technical assistance under this subsection.

"(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

AMENDMENT NO. 1278

On page 3, between lines 4 and 5, insert the following:

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

On page 22, line 17, strike "Act" and insert "title".

On page 23, line 15, strike "Act," and insert "title,".

On page 23, line 22, strike "Acts" and insert "provisions".

On page 24, line 6, strike "Acts" and insert "provisions".

On page 24, line 9, strike "Acts" and insert "provisions".

On page 24, line 13, strike "Acts" and insert "provisions".

On page 27, line 15, strike "Act" and insert "title".

On page 28, line 23, strike "Act" and insert "title".

On page 29, strike lines 1 through 16 and insert the following new titles:

TITLE II—GLASS CEILING

SEC. 201. SHORT TITLE.

This title may be cited as the "Glass Ceiling Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" undertaken by the Department of Labor, including the release of the report entitled "Report on the Glass Ceiling Initiative", has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the management and decisionmaking levels in the United States work force;

(B) the underrepresentation of women and minorities in line functions in the United States work force;

(C) the lack of access for qualified women and minorities to credential-building developmental opportunities; and

(D) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which management and decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to management and decisionmaking positions;

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities; and

(8) employment quotas based on race, sex, national origin, religious belief, or disability—

(A) are antithetical to the historical commitment of the Nation to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) PURPOSE.—The purpose of this title is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills management and decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

SEC. 203. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this title as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to management and decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, including—

(A) six individuals appointed by the President;

(B) six individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold management or decisionmaking positions in corporations or other business entities recognized as leaders on issues relating to equal employment opportunity; and

(C) possess academic expertise or other recognized ability regarding employment issues.

(3) BALANCE.—In making the appointments under subparagraphs (A) and (B) of paragraph (1), each appointing authority shall seek to include an appropriate balance of appointees from among the groups of appointees described in subparagraphs (A), (B), and (C) of paragraph (2).

(c) CHAIRPERSON.—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) TERM OF OFFICE.—Members shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States

Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code; and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 204. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO MANAGEMENT AND DECISIONMAKING POSITIONS IN BUSINESS.

(a) ADVANCEMENT STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to management and decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to management and decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which management and decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to management and decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to management and decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to management and decisionmaking positions in business.

(b) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the management and decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume management and decisionmaking positions;

(C) compensation programs and reward structures utilized to reward and retain key employees; and

(D) the use of enforcement (including such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(c) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to management and decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 205. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) IN GENERAL.—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to management and decisionmaking positions.

(d) BUSINESS.—For the purposes of this section, the term "business" includes—

(1)(A) a corporation including nonprofit corporations;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in subparagraphs (A) through (D);

(2) an education referral program, or a training program, such as an apprenticeship or management training program or a similar program; and

(3) a joint program formed by a combination of any entities discussed in paragraphs (1) or (2).

SEC. 206. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

(a) INDIVIDUAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 204 and 205, the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 208. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) TECHNICAL ASSISTANCE.—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title. The sums shall remain available until expended, without fiscal year limitation.

SEC. 10. TERMINATION.

(a) COMMISSION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

(b) AWARD.—The authority to make awards under section 205 shall terminate 4 years after the date of the enactment of this Act.

TITLE III—GENERAL PROVISIONS

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 302. EFFECTIVE DATE.

Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

KENNEDY AMENDMENT NO. 1279

Mr. MITCHELL (for Mr. KENNEDY) proposed an amendment to amendment No. 1278 proposed by Mr. DOLE to the bill S. 1745, supra, as follows:

On page 14, line 7, before the word "National" insert the following: "Frances Perkins-Elizabeth Hanford Dole".

KENNEDY AMENDMENT NO. 1280

Mr. KENNEDY proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 5, line 22, insert "political" after "agency, or".

On page 6, line 16, strike "15" and insert "14".

On page 10, line 13, strike "business" and insert "employment".

On page 12, line 23, strike "this".

On page 21, line 3, strike "section 1977 or 1977a" and insert "section 1977 or 1977A".

KENNEDY AMENDMENT NO. 1281

Mr. KENNEDY submitted an amendment, which was subsequently modified, to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 7, line 21, insert "the Equal Employment Opportunity Commission, the Attorney General, or" after "subsection (a)(1),".

On page 8, line 2, insert "the Equal Employment Opportunity Commission, the Attorney General, or" after subsection (a)(2).".

MCCONNELL (AND OTHERS) AMENDMENT NO. 1282

Mr. MCCONNELL (for himself, Mr. BOND, and Mr. DOMENICI) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

After section 20 of the amendment, insert the following new section:

SEC. 20A. ATTORNEY FEES LIMITATION; PRIVATE RIGHT OF ACTION; DISCLOSURE AND ESTIMATES; HOURLY RATE RIGHT.

(a) ATTORNEY FEES.—(1) Notwithstanding any other provision of law, no plaintiff's attorney may charge, demand, receive, or collect for services rendered, fees in excess of 20 percent of any judgment, settlement, award, on compromise concerning any right or interest under the provisions of this Act, or the Acts awarded by this Act.

(a) Any attorney who charges, demands, receives, or collects for services rendered in connection with a claim any amount in excess of that allowed under this subsection, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than 1 year, or both.

(b) DISCLOSURE AND ESTIMATES.—(1) Notwithstanding any other provision of law, any attorney representing a plaintiff on a contingency fee basis concerning any right or interest under any provision of this Act, any amendment made by this Act, or the Acts amended by this Act, shall provide, prior to any binding agreement for legal services, a complete written estimate of all reasonably likely legal costs, including—

(A) the total percentage amount of the contingency fee that shall be deducted from any court award provided to the plaintiff;

(B) the attorney's hourly rate for legal services, and an estimate of the total number of hours required to conduct the legal proceeding; and

(C) any additional expenses, costs, and fees that shall be charged to the plaintiff or against the court award, and whether such additional expenses, costs, and fees shall be charged regardless of the outcome of the court proceeding.

(2) An Attorney representing a plaintiff on a contingency fee basis concerning any right or interest under this Act, any amendment made by this Act, or the Acts amended by this Act, may not charge the plaintiff more than 125 percent of the furnished estimate for additional expenses, costs, and fees, without obtaining the written consent of the plaintiff before the expenses, costs, and fees in excess of the estimate are incurred.

(3) In any action concerning any right or interest under this Act, any amendment made by this Act, or the Acts amended by this Act, before any final determination on damages or awards by the court, the attorney shall furnish the court with copies of the initial written estimate of fees and other expenses, and any written consent forms executed by the plaintiff.

(c) PRIVATE RIGHT OF ACTION.—(1) Notwithstanding any judicial enforcement of any provision of this section, a plaintiff shall have a private right of action to enforce any such provision in the appropriate Federal court, and to recover any amounts appropriated by the attorney in violation of any such provision, as well as interest, court costs, and reasonable attorney fees.

(2) The private right of action provided under this subsection may not be filed 5 or more years after the events giving rise to the action were discovered or should have been discovered.

(d) HOURLY RATE RIGHT.—(1) Notwithstanding any other provision of law, any attorney representing a plaintiff concerning any right or interest under any provision of this Act, any amendment made by this Act, or the Acts amended by this Act, shall provide the plaintiff the option of paying for legal services on an hourly rate basis or a contingency fee basis. No attorney may refuse to provide such legal services on the basis of the plaintiff electing to pay on an hourly rate basis.

(2) Any attorney who violates the provisions of paragraph (1) shall be fined not more than $2,000 or imprisoned not more than 1 year, or both.

BROWN AMENDMENT NO. 1283

Mr. BROWN proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At the appropriate place in the amendment, add the following new section:

SEC. . EQUAL APPLICATION OF THE LAW TO CONGRESS.

The Congress finds—

That Congress should be required to adhere to laws affecting the public at large in the same manner and form;

That Congress has exempted itself from more than a dozen laws;

That the credibility and reputation of Congress would be bolstered by the enactment of legislation requiring coverage under these laws; and

That Federalist Paper, Number 57, asserts that elected officials "can make no law which will not have in full operation on themselves and their friends, as well as on the great mass of society. ... If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature as well as on the people, the people will be prepared to tolerate any thing but liberty."

Therefore, it is the Sense of the Senate that the Senate recognizes the need to create an equitable balance between laws governing the public at large and its own affairs, and that the Senate will act with speed in rectifying this shortcoming in the application of laws governing civil rights, labor, ethics, safety, privacy, and governmental access policies.

NICKLES (AND OTHERS) AMENDMENT NO. 1284

Mr. NICKLES (for himself, Mr. PACKWOOD, Mr. BROWN, and Mr. MCCAIN) proposed an amendment to amendment No. 1283 proposed by Mr. BROWN to amendment No. 1274 (in the nature of a substitute) proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At the end of the pending amendment, add the following:

Notwithstanding section 19 of this Act, the following section shall apply in lieu of section 19:

SEC. . COVERAGE OF CONGRESS AND PRESIDENTIAL APPOINTEES.

(a) CONGRESSIONAL EMPLOYMENT.—

(1) APPLICATION.—

(A) IN GENERAL.—In addition to the laws that apply with respect to employment by the Senate under section 509(a)(2) of the Americans with Disabilities Act of 1990, the rights and protections provided pursuant to this Act and the provisions specified in subparagraph (B) shall apply with respect to employment by Congress.

(B) PROVISIONS.—The provisions that shall apply with respect to employment by Congress shall be—

(i) section 1977 of the Revised Statutes (42 U.S.C. 1981);

(ii) section 1977A of the Revised Statutes (as added by section 5 of this Act);

(iii) the National Labor Relations Act (29 U.S.C. 151 et seq.);

(iv) the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.);

(v) the Equal Pay Act of 1963 (29 U.S.C. 206); and

(vi) the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the limitations contained in this paragraph, a congressional employee or any person, including a class or organization on behalf of a congressional employee, may bring an administrative action before an administrative agency to enforce a provision of law referred to in paragraph (1) against Congress or the congressional employer of the employee, if a similarly situated complaining party may bring such an action before the agency.

(B) LIMITATIONS ON COMMENCEMENT OF ADMINISTRATIVE ACTION.—An administrative action commenced under this paragraph to enforce a provision of law referred to in paragraph (1) shall be commenced in accordance with the limitations, exhaustion, and other procedural requirements of the law otherwise applicable to a similarly situated complaining party seeking to enforce the provision.

(C) ACTION.—In any administrative action brought before an agency under this paragraph to enforce a provision of law referred to in paragraph (1), the agency may take such action against Congress or the congressional employer as the agency could take in an action brought by a similarly situated complaining party.

(3) ENFORCEMENT BY CIVIL ACTION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the limitations contained in this paragraph, a congressional employee or any person, including a class or organization on behalf of a congressional employee, may bring a civil action to enforce a provision of law referred to in paragraph (1) in a court specified in subparagraph (C) against Congress or the congressional employer of the employee, if a similarly situated complaining party may bring such an action.

(B) LIMITATIONS ON COMMENCEMENT OF CIVIL ACTION.—A civil action commenced under this paragraph to enforce a provision of law referred to in paragraph (1) shall be commenced in accordance with the limitations, exhaustion, and other procedural requirements of the law otherwise applicable to a similarly situated complaining party seeking to enforce the provision.

(C) VENUE.—An action may be brought under this paragraph to enforce a provision of law referred to in paragraph (1) in any court of competent jurisdiction in which a similarly situated complaining party may otherwise bring an action to enforce the provision.

(D) RELIEF.—In any civil action brought under this paragraph to enforce a provision of law referred to in paragraph (1), the court—

(i) may grant as relief against Congress or the congressional employer any equitable relief otherwise available to a similarly complaining party bringing an action to enforce the provision;

(ii) may grant as relief against Congress any damages that would otherwise be available to such a complaining party; and

(iii) shall allow such fees and costs as would be allowed in such an action.

(b) CONDUCT REGARDING MATTERS OTHER THAN EMPLOYMENT.—

(1) APPLICATION.—In accordance with section 509(a)(6) of the Americans with Disabilities Act of 1990, the rights and protections provided pursuant to such Act shall apply with respect to the conduct of Congress regarding matters other than employment.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, any person may bring an administrative action described in subsection (a)(2) in accordance with such subsection, or a civil action described in subsection (a)(3) in accordance with such subsection, against Congress or a congressional employer, to enforce paragraph (1).

(c) INFORMATION.—

(1) APPLICATION.—The rights and protections provided pursuant to section 552a of title 5, United States Code (commonly known as the the Privacy Act), shall apply with respect to information in the possession of the Congress.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, any person may bring an administrative action described in subsection (a)(2) in accordance with such subsection, or a civil action described in subsection (a)(3) in accordance with such subsection, against Congress, or the congressional employer in possession of the information, to enforce paragraph (1).

(d) ETHICS IN GOVERNMENT.—

(1) APPLICATION.—The rights and protections provided pursuant to chapter 40 of title 28, United States Code (commonly known as title VI of the Ethics in Government Act of 1978) shall apply with respect to investigation of congressional improprieties.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, any person may bring a civil action described in subsection (a)(3) in accordance with such subsection against any party with a duty under chapter 40 of title 28, to enforce paragraph (1).

(e) PRESIDENTIAL APPOINTEES.—

(1) APPLICATION.—In addition to the laws that apply with respect to employment by the Senate under section 509(a)(2) of the Americans with Disabilities Act of 1990, the rights and protections provided pursuant to this Act and sections 1977 and 1977A of the Revised Statutes shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT.—Notwithstanding any other provision of law, a Presidential appointee or any person, including a class or organization on behalf of a Presidential appointee, may bring an administrative action described in subsection (a)(2) in accordance with such subsection, or a civil action described in subsection (a)(3) in accordance with such subsection, against the United States to enforce paragraph (1), if a similarly situated complaining party may bring such an administrative or civil action before the agency.

(f) DEFINITIONS.—Notwithstanding any other provision of this Act, as used in this section:

(1) CONGRESSIONAL EMPLOYER.—The term "congressional employer" means—

(A) a supervisor, as described in paragraph 12 of rule XXXVII of the Standing Rules of the Senate;

(B)(i) a Member of the House of Representatives, with respect to the administrative, clerical, or other assistants of the Member;

(ii)(I) a Member who is the chairman of a committee, with respect, except as provided in subclause (II), to the professional, clerical, or other assistants to the committee; and

(II) the ranking minority Member on a committee, with respect to the minority staff members of the committee;

(iii)(I) a Member who is a chairman of a subcommittee which has its own staff and financial authorization, with respect, except as provided in subclause (II), to the professional, clerical, or other assistants to the subcommittee; and

(II) the ranking minority Member on the subcommittee, with respect to the minority staff members of the committee;

(iv) the Majority and Minority Leaders and the Majority and Minority Whips, with respect to the research, clerical, or other assistants assigned to their respective offices; and

(v) the other officers of the House of Representatives, with respect to the employees of the officers; and

(C)(i) the Architect of the Capitol, with respect to the employees of the Architect of the Capitol;

(ii) the Director of the Congressional Budget Office, with respect to the employees of the Office;

(iii) the Comptroller General, with respect to the employees of the General Accounting Office;

(iv) the Public Printer, with respect to the employees of the Government Printing Office;

(v) the Librarian of Congress, with respect to the employees of the Library of Congress;

(vi) the Director of the Office of Technology Assessment, with respect to the employees of the Office; and

(vii) the Director of the United States Botanic Garden, with respect to the employees of the United States Botanic Garden.

(2) CONGRESSIONAL EMPLOYEE.—The term "congressional employee" means an employee who is employed by, or an applicant for employment with, a congressional employer.

(3) PRESIDENTIAL APPOINTEE.—The term "Presidential appointee" means an employee, or an applicant seeking to become an employee—

(A) whose appointment is made by and with the advice and consent of the Senate; or

(B) whose position has been determined to be of a confidential, policy-determining, pol-

icymaking, or policy-advocating character by—

(i) the President for a position that the President has excepted from the competitive service;

(ii) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(iii) the President or head of an agency for a position excepted from the competitive service by statute.

(4) SIMILARLY SITUATED COMPLAINING PARTY.—The term "similarly situated complaining party" means—

(A) in the case of a party seeking to enforce a provision with a separate enforcement mechanism for governmental complaining parties, a governmental complaining party; or

(B) in the case of a party seeking to enforce a provision with no such separate mechanism, a complaining party.

(g) EFFECTIVE DATE.—This section shall take effect 120 days after the date of the enactment of this Act.

WARNER (AND OTHERS) AMENDMENT NO. 1285

(Ordered to lie on the table.)

Mr. WARNER (for himself, Ms. MIKULSKI, Mr. STEVENS, Mr. WIRTH, and Mr. ROBB) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 4, line 5, insert "or 717" after "706".

On page 4, line 23, after "U.S.C. 12117(a)))", insert the following: ", or under Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791),".

DANFORTH (AND OTHERS) AMENDMENT NO. 1286

Mr. DANFORTH (for himself, Mr. KENNEDY, Mr. HATCH, and Mr. DOLE) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 9, line 5, insert "(a)" before "Section 703".

On page 11, line 5 insert after "or national origin." the following:

"(b) No statements other than the interpretive memorandum appearing at 137 Congressional Record S. 15,276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this act that relates to Wards Cove—Business necessary/cumulation/alternative business practice.".

GRASSLEY (AND OTHERS) AMENDMENT NO. 1287

Mr. GRASSLEY (for himself, Mr. MITCHELL, Mr. SPECTER, Mr. BROWN, Mr. HARKIN, Mr. PACKWOOD, and Mr. PRESSLER) proposed an amendment, which was subsequently modified, to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 1, between lines 2 and 3, insert the following:

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

On page 22, line 21, strike "CONGRESS" and insert "HOUSE OF REPRESENTATIVES".

On page 22, strike line 23 and all that follows through page 25, line 22.

On page 25, line 23, strike "(b)" and insert "(a)".

On page 27, line 13, strike "(c)" and insert "(b)".

On page 27, line 25, insert ", except for the employees who are defined as Senate employees, in section 201(c)(1)" after "apply exclusively".

On page 28, following line 23, add the following new title:

TITLE II—GOVERNMENT EMPLOYEE RIGHTS

SEC. 201. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) SHORT TITLE.—This title may be cited as the "Government Employee Rights Act of 1991".

(b) PURPOSE.—The purpose of this title is to provide procedures to protect the right of Senate and other government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) DEFINITIONS.—For purposes of this title:

(1) SENATE EMPLOYEE.—The term "Senate employee" or "employee" means—

(A) any employee whose pay is disbursed by the Secretary of the Senate;

(B) any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;

(C) any applicant for a position that will last 90 days or more and that is to be occupied by an individual described in subparagraph (A) or (B); or

(D) any individual who was formerly an employee described in subparagraph (A) or (B) and whose claim of a violation arises out of the individual's Senate employment.

(2) HEAD OF EMPLOYING OFFICE.—The term "head of employing office" means the individual who has final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the Senate employment of an employee.

(3) VIOLATION.—The term "violation" means a practice that violates section 202 of this title.

SEC. 202. DISCRIMINATORY PRACTICES PROHIBITED.

All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102–104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–14).

SEC. 203. ESTABLISHMENT OF OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES.

(a) IN GENERAL.—There is established, as an office of the Senate, the Office of Senate Fair Employment Practices (referred to in this title as the "Office"), which shall—

(1) administer the processes set forth in sections 205 through 207;

(2) implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader. The appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed. A Director may be reappointed at the termination of any term of service. The President pro tempore, upon the joint recommendation of the Majority Leader in consultation with the Minority Leader, may remove the Director at any time.

(2) SALARY.—The President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader, shall establish the rate of pay for the Director. The salary of the Director may not be reduced during the employment of the Director and shall be increased at the same time and in the same manner as fixed statutory salary rates within the Senate are adjusted as a result of annual comparability increases.

(3) ANNUAL BUDGET.—The Director shall submit an annual budget request for the Office to the Committee on Appropriations.

(4) APPOINTMENT OF DIRECTOR.—The first Director shall be appointed and begin service within 90 days after the date of enactment of this Act, and thereafter the Director shall be appointed and begin service within 30 days after the beginning of the session of the Congress immediately following the termination of a Director's term of service or within 60 days after a vacancy occurs in the position.

(c) STAFF OF THE OFFICE.—

(1) APPOINTMENT.—The Director may appoint and fix the compensation of such additional staff, including hearing officers, as are necessary to carry out the purposes of this title.

(2) DETAILEES.—The Director may, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, use on a reimbursable or nonreimbursable basis the services of any such department or agency, including the services of members or personnel of the General Accounting Office Personnel Appeals Board.

(3) CONSULTANTS.—In carrying out the functions of the Office, the Director may procure the temporary (not to exceed 1 year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) EXPENSES OF THE OFFICE.—In fiscal year 1992, the expenses of the Office shall be paid out of the Contingent Fund of the Senate from the appropriation account Miscellaneous Items. Beginning in fiscal year 1993, and for each fiscal year thereafter, there is authorized to be appropriated for the expenses of the Office such sums as shall be necessary to carry out its functions. In all cases, expenses shall be paid out of the Contingent Fund of the Senate upon vouchers approved by the Director, except that a voucher shall not be required for—

(1) the disbursement of salaries of employees who are paid at an annual rate;

(2) the payment of expenses for telecommunications services provided by the Telecommunications Department, Sergeant at Arms, United States Senate;

(3) the payment of expenses for stationery supplies purchased through the Keeper of the Stationery, United States Senate;

(4) the payment of expenses for postage to the Postmaster, United States Senate; and

(5) the payment of metered charges on copying equipment provided by the Sergeant at Arms, United States Senate.

The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out this title. Expenses of the Office shall include authorized travel for personnel of the Office.

(e) RULES OF THE OFFICE.—The Director shall adopt rules governing the procedures of the Office, including the procedures of hearing boards, which rules shall be submitted to the President pro tempore for publication in the Congressional Record. The rules may be amended in the same manner. The Director may consult with the Chairman of the Administrative Conference of the United States on the adoption of rules.

(f) REPRESENTATION BY THE SENATE LEGAL COUNSEL.—For the purpose of representation by the Senate Legal Counsel, the Office shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978 (2 U.S.C. 288, et seq.).

SEC. 204. SENATE PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The Senate procedure for consideration of alleged violations consists of 4 steps as follows:

(1) Step I, counseling, as set forth in section 205.

(2) Step II, mediation, as set forth in section 206.

(3) Step III, formal complaint and hearing by a hearing board, as set forth in section 207.

(4) Step IV, review of a hearing board decision, as set forth in section 208 or 209.

SEC. 205. STEP I: COUNSELING.

(a) IN GENERAL.—A Senate employee alleging a violation may request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the alleged violation forming the basis of any request for counseling occurred. No request for counseling may be made until 10 days after the first Director begins service pursuant to section 203(b)(4).

(b) PERIOD OF COUNSELING.—The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

(c) EMPLOYEES OF THE ARCHITECT OF THE CAPITOL AND CAPITOL POLICE.—In the case of an employee of the Architect of the Capitol or an employee who is a member of the Capitol Police, the Director may refer the employee to the Architect of the Capitol or the Capitol Police Board for resolution of the employee's complaint through the internal grievance procedures of the Architect of the Capitol or the Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.

SEC. 206. STEP II: MEDIATION.

(a) IN GENERAL.—Not later than 15 days after the end of the counseling period, the employee may file a request for mediation with the Office. Mediation may include the Office, the employee, and the employing office in a process involving meetings with the parties separately or jointly for the purpose of resolving the dispute between the employee and the employing office.

(b) MEDIATION PERIOD.—The mediation period shall be 30 days beginning on the date the request for mediation is received and may be extended for an additional 30 days at the discretion of the Office. The Office shall notify the employee and the head of the employing office when the mediation period has ended.

SEC. 207. STEP III: FORMAL COMPLAINT AND HEARING.

(a) FORMAL COMPLAINT AND REQUEST FOR HEARING.—Not later than 30 days after receipt by the employee of notice from the Office of the end of the mediation period, the Senate employee may file a formal complaint with the Office. No complaint may be filed unless the employee has made a timely request for counseling and has completed the procedures set forth in sections 205 and 206.

(b) HEARING BOARD.—A board of 3 independent hearing officers (referred to in this title as "hearing board"), who are not Senators or officers or employees of the Senate, chosen by the Director (one of whom shall be designated by the Director as the presiding hearing officer) shall be assigned to consider each complaint filed under this section. The Director shall appoint hearing officers after considering any candidates who are recommended to the Director by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters. A hearing board shall act by majority vote.

(c) DISMISSAL OF FRIVOLOUS CLAIMS.—Prior to a hearing under subsection (d), a hearing board may dismiss any claim that it finds to be frivolous.

(d) HEARING.—A hearing shall be conducted—

(1) in closed session on the record by a hearing board;

(2) no later than 30 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 60 days the time for conducting a hearing; and

(3) except as specifically provided in this title and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code.

(e) DISCOVERY.—Reasonable prehearing discovery may be permitted at the discretion of the hearing board.

(f) SUBPOENA.—

(1) AUTHORIZATION.—A hearing board may authorize subpoenas, which shall be issued by the presiding hearing officer on behalf of the hearing board, for the attendance of witnesses at proceedings of the hearing board and for the production of correspondence, books, papers, documents, and other records.

(2) OBJECTIONS.—If a witness refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with the proceedings of a hearing board, the hearing board shall rule on the objection. At the request of the witness, the employee, or employing office, or on its own initiative, the hearing board may refer the objection to the Select Committee on Ethics for a ruling.

(3) ENFORCEMENT.—The Select Committee on Ethics may make to the Senate any recommendations by report or resolution, including recommendations for criminal or civil enforcement by or on behalf of the Office, which the Select Committee on Ethics may consider appropriate with respect to—

(A) the failure or refusal of any person to appear in proceedings under this or to produce records in obedience to a subpoena or order of the hearing board; or

(B) the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under this section.

For purposes of section 1365 of title 28, United States Code, the Office shall be deemed to be a committee of the Senate.

(g) DECISION.—The hearing board shall issue a written decision as expeditiously as possible, but in no case more than 45 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the employee and the employing office. The decision shall state the issues raised by the complaint, describe the evidence in the record, and contain a determination as to whether a violation has occurred.

(h) REMEDIES.—If the hearing board determines that a violation has occurred, it shall order such remedies as would be appropriate if awarded under section 706(g) and (k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(g) and (k)), and may also order the award of such compensatory damages as would be appropriate if awarded under section 1977 and section 1977A(a) and (b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981A(a) and (b)(2)). In the case of a determination that a violation based on age has occurred, the hearing board shall order such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)). Any order requiring the payment of money must be approved by a Senate resolution reported by the Committee on Rules and Administration. The hearing board shall have no authority to award punitive damages.

(i) PRECEDENT AND INTERPRETATIONS.—Hearing boards shall be guided by judicial decisions under statutes referred to in section 202 and subsection (h) of this section, as well as the precedents developed by the Select Committee on Ethics under section 208, and other Senate precedents.

SEC. 208. REVIEW BY THE SELECT COMMITTEE ON ETHICS.

(a) IN GENERAL.—An employee or the head of an employing office may request that the Select Committee on Ethics (referred to in this section as the "Committee"), or such other entity as the Senate may designate, review a decision under section 207, including any decision following a remand under subsection (c), by filing a request for review with the Office not later than 10 days after the receipt of the decision of a hearing board. The Office, at the discretion of the Director, on its own initiative and for good cause, may file a request for review by the Committee of a decision of a hearing board not later than 5 days after the time for the employee or employing office to file a request for review has expired. The Office shall transmit a copy of any request for review to the Committee and notify the interested parties of the filing of the request for review.

(b) REVIEW.—Review under this section shall be based on the record of the hearing board. The Committee shall adopt and publish in the Congressional Record procedures for requests for review under this section.

(c) REMAND.—Within the time for a decision under subsection (d), the Committee may remand a decision no more than 1 time to the hearing board for the purpose of supplementing the record or for further consideration.

(d) FINAL DECISION.—

(1) HEARING BOARD.—If no timely request for review is filed under subsection (a), the Office shall enter as a final decision, the decision of the hearing board.

(2) SELECT COMMITTEE ON ETHICS.—

(A) If the Committee does not remand under subsection (c), it shall transmit a writ-

ten final decision to the Office for entry in the records of the Office. The Committee shall transmit the decision not later than 60 calendar days during which the Senate is in session after the filing of a request for review under subsection (a). The Committee may extend for 15 calendar days during which the Senate is in session the period for transmission to the Office of a final decision.

(B) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, unless a majority of the Committee votes to reverse or remand the decision of the hearing board within the time for transmission to the Office of a final decision.

(C) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, if the Committee, in its discretion, decides not to review, pursuant to a request for review under subsection (a), a decision of the hearing board, and notifies the interested parties of such decision.

(3) ENTRY OF A FINAL DECISION.—The entry of a final decision in the records of the Office shall constitute a final decision for purposes of judicial review under section 209.

(e) STATEMENT OF REASONS.—Any decision of the Committee under subsection (c) or subsection (d)(2)(A) shall contain a written statement of the reasons for the Committee's decision.

SEC. 209. JUDICIAL REVIEW.

(a) IN GENERAL.—Any Senate employee aggrieved by a final decision under section 208(d) may petition for review by the United States Court of Appeals for the Federal Circuit.

(b) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that—

(1) with respect to section 2344 of title 28, United States Code, service of the petition shall be on the Senate Legal Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, United States Code, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 208(d);

(4) the Office shall be an "agency" as that term is used in chapter 158 of title 28, United States Code; and

(5) the Office shall be the respondent in any proceeding under this section.

(c) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. The record on review shall include the record before the hearing board, the decision of the hearing board, and the decision, if any, of the Select Committee on Ethics.

(d) ATTORNEY'S FEES.—If an employee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

SEC. 210. RESOLUTION OF COMPLAINT.

If, after a formal complaint is filed under section 207, the employee and the head of the employing office resolve the issues involved, the employee may dismiss the complaint or the parties may enter into a written agreement, subject to the approval of the Director.

SEC. 211. COSTS OF ATTENDING HEARINGS.

Subject to the approval of the Director, an employee with respect to whom a hearing is held under this title may be reimbursed for actual and reasonable costs of attending proceedings under sections 207 and 208, consistent with Senate travel regulations. Senate Resolution 259, agreed to August 5, 1987 (100th Congress, 1st Session), shall apply to witnesses appearing in proceedings before a hearing board.

SEC. 212. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any employee by any Member, officer, or employee of the Senate, or by the Architect of the Capitol, or anyone employed by the Architect of the Capitol, as the case may be, because of the exercise of a right under this title constitutes an unlawful employment practice, which may be remedied in the same manner under this title as is a violation.

SEC. 213. CONFIDENTIALITY.

(a) COUNSELING.—All counseling shall be strictly confidential except that the Office and the employee may agree to notify the head of the employing office of the allegations.

(b) MEDIATION.—All mediation shall be strictly confidential.

(c) HEARINGS.—Except as provided in subsection (d), the hearings, deliberations, and decisions of the hearing board and the Select Committee on Ethics shall be confidential.

(d) FINAL DECISION OF SELECT COMMITTEE ON ETHICS.—The final decision of the Select Committee on Ethics under section 208 shall be made public if the decision is in favor of the complaining Senate employee or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee on Ethics may decide to release any other decision at its discretion. In the absence of a proceeding under section 208, a decision of the hearing board that is favorable to the employee shall be made public.

(e) RELEASE OF RECORDS FOR JUDICIAL REVIEW.—The records and decisions of hearing boards, and the decisions of the Select Committee on Ethics, may be made public if required for the purpose of judicial review under section 209.

SEC. 214. EXERCISE OF RULEMAKING POWER.

The provisions of this title, except for sections 209, 220, 221, and 222, are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. Notwithstanding any other provision of law, except as provided in section 209, Enforcement and adjudication with respect to the discriminatory practices prohibited by section 202, and arising out of Senate employment, shall be within the exclusive jurisdiction of the United States Senate.

SEC. 215. TECHNICAL AND CONFORMING AMENDMENTS.

Section 509 of the Americans With Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) through (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (2) and (3), respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking "(2) and (6)(A)" and inserting "(2)(A)", as redesignated by subparagraph (B) of this paragraph; and

(ii) by striking "(3), (4), (5), (6)(B), and (6)(C)" and inserting "(2); and

(2) in subsection (c)(2), by inserting ", except for the employees who are defined as Senate employees, in section 201(c)(1) of the Civil Rights Act of 1991)" after "shall apply exclusively".

SEC. 216. POLITICAL AFFILIATION AND PLACE OF RESIDENCE.

(a) IN GENERAL.—It shall not be a violation with respect to an employee described in subsection (b) to consider the—

(1) party affiliation;

(2) domicile; or

(3) political compatibility with the employing office,

of such an employee with respect to employment decisions.

(b) DEFINITION.—For purposes of this section, the term "employee" means—

(1) an employee on the staff of the Senate leadership;

(2) an employee on the staff of a committee or subcommittee;

(3) an employee on the staff of a Member of the Senate;

(4) an officer or employee of the Senate elected by the Senate or appointed by a Member, other than those described in paragraphs (1) through (3); or

(5) an applicant for a position that is to be occupied by an individual described in paragraphs (1) through (4).

SEC. 217. OTHER REVIEW.

No Senate employee may commence a judicial proceeding to redress discriminatory practices prohibited under section 202 of this title, except as provided in this title.

SEC. 218. OTHER INSTRUMENTALITIES OF THE CONGRESS.

It is the sense of the Senate that legislation should be enacted to provide the same or comparable rights and remedies as are provided under this title to employees of instrumentalities of the Congress not provided with such rights and remedies.

SEC. 219. RULE XLII OF THE STANDING RULES OF THE SENATE.

(a) REAFFIRMATION.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(b) AUTHORITY TO DISCIPLINE.—Notwithstanding any provision of this title, including any provision authorizing orders for remedies to Senate employees to redress employment discrimination, the Select Committee on Ethics shall retain full power, in accordance with its authority under Senate Resolution 338, 88th Congress, as amended, with respect to disciplinary action against a Member, officer, or employee of the Senate for a violation of Rule XLII.

SEC. 220. COVERAGE OF PRESIDENTIAL APPOINTEES.

(a) IN GENERAL.—

(1) APPLICATION.—The rights, protections, and remedies provided pursuant to section 202 and 207(h) of this title shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any Presidential appointee may file a complaint alleging a violation with the Equal Employment Opportunity Commission, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(ii) not made consistent with required procedures; or

(iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) ATTORNEY'S FEES.—If the presidential appointee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(b) PRESIDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 202 but does not include any individual—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or

(3) who is a member of the uniformed services.

SEC. 221. COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES.

(a) APPLICATION.—The rights, protections, and remedies provided pursuant to section 202 and 207(h) of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any individual referred to in subsection (a) may file a complaint alleging a violation with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(c) JUDICIAL REVIEW.—Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(d) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) ATTORNEY'S FEES.—If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

SEC. 222. SEVERABILITY.

Notwithstanding section 301 of this Act, if any provision of section 209 or 220(a)(3) is invalidated, both sections 209 and 220(a)(3) shall have no force and effect.

WARNER (AND OTHERS) AMENDMENT NO. 1288

(Ordered to lie on the table.)

Mr. WARNER (for himself, Ms. MIKULSKI, Mr. STEVENS, Mr. WIRTH, Mr. ROBB, and Mr. ADAMS) submitted an amendment intended to be proposed by them to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 4, line 5, insert "or 717" after "706".

On page 4, line 10, strike "or 704" and insert "704, or 717".

On page 4, line 23, insert ", and section 505(a)(c) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)," before "against a".

On page 4, line 25, insert "section 501 of the Rehabilitation Act of 1973, (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or" before "section 102".

On page 4, line 25, strike "Act" and insert "Americans with Disabilities Act of 1990".

On page 5, line 10, insert "or regulations implementing section 501 of the Rehabilitation Act of 1973" before ", damage".

On page 4, line 20 insert "or 717" after "706".

THE 900 SERVICES CONSUMER PROTECTION ACT OF 1991

INOUYE AMENDMENT NO. 1289

Mr. FORD (for Mr. INOUYE) proposed an amendment to the bill (S. 1579) to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes, as follows:

Strike all on page 4, lines 1 through 7, and insert in lieu thereof the following:

(1) The term "pay-per-call service" means any information service, provided by telephone, which receives payment, directly or indirectly, from each person who calls that service by telephone, except that such term shall not include information services for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service. The Federal Communications Commission shall, by regulation, specify in greater detail the kinds of information services that are included within such term and the criteria for determining whether a valid presubscription or comparable arrangement is created, consistent with the purposes of this Act.

Strike all on page 12, lines 12 through 20, and insert in lieu thereof the following:

(2) In conducting a proceeding under subsection (a), the Federal Trade Commission shall consider requiring by rule or regulation that a pay-per-call service for which there is a nominal per-call charge shall be exempt from the requirements of subsection (b).

At the end of page 12, add the following new subsection:

(g) APPLICABILITY OF PENALTIES TO COMMON CARRIERS.—No common carrier shall be liable for a criminal or civil sanction or penalty under this Act solely because it provided transmission or billing collection services for a pay-per-call service that violated a rule or regulation issued or prescribed under this Act.

On page 15, line 12, strike "their" and insert in lieu thereof "its".

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on October 29, 1991, beginning at 9:45 a.m., in 485 Russell Senate Office Building, to consider for report to the Senate S. 168, the Three Affiliated

Tribes and Standing Rock Sioux Tribe Equitable Compensation Act and S. 754, to provide that a portion of the income derived from trust or restricted land held by an individual Indian shall not be considered as a resource or income in determining eligibility for assistance under any Federal or federally assisted program, and to meet on H.R. 1476 and S. 1869, the San Carlos Indian Irrigation Project Divestiture Act of 1991.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Tuesday, October 29, 1991, at 10 a.m. to conduct a hearing on issues related to multifamily housing finance.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry, Subcommittee on Agricultural Research and General Legislation be allowed to meet during the session of the Senate on Tuesday, October 29, 1991, at 2:30 p.m., to hold a hearing on reducing foreign material limits in official soybean standards.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, October 29, 1991, at 10 a.m., to hold a hearing by the Patents Subcommittee.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, October 29, 1991, at 4 p.m., for a hearing on S. 1845, the Financial Aid for All Students Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, October 29, 1991, at 10 a.m. for a hearing on OSHA reform: Fulfilling the promise of a safe and healthy workplace.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON THE CONSUMER

Mr. FORD. Mr. President, I ask unanimous consent that the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on Tuesday, October 29, 1991, immediately following the 3 p.m. nomination hearing on developments in automotive fuel economy technology.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on Tuesday, October 29, 1991, at 2:30 p.m. on the nomination of Mary L. Azcuenaga to be a Federal Trade Commissioner.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON THE MERCHANT MARINE

Mr. FORD. Mr. President, I ask unanimous consent that the Merchant Marine Subcommittee of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on Tuesday, October 29, 1991, at 10 a.m. on overview of Federal shipbuilding chartering practices.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on October 29, 1991, at 10:30 a.m. to consider the nominations of Michael H. Moskow to be a Deputy U.S. Trade Representative and David M. Nummy to be an Assistant Secretary of the Treasury, and to consider a request for a section 332 study on Latin American trade barriers.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

PRESIDENT SERRANO SHOULD BE CONGRATULATED ON GUATEMALAN HUMAN RIGHTS BREAKTHROUGH

• Mr. CRANSTON. Mr. President, I rise today to offer my sincerest congratulations to Guatemalan President Jorge Serrano for his leadership in breaking one of his country's longstanding antidemocratic traditions—the impunity of military officers responsible for atrocious human rights violations.

Last week a military court in Guatemala handed down sentences against 2 military officers for their role in the massacre last December of 13 unarmed civilians in the town of Santiago Atitlan.

The slaughter at Santiago Atitlan, where 21 others were wounded, forms part of a more than three-decade history of military brutality against the poor and mostly indigenous communities of Guatemala.

What is remarkable is that this case, which is unrepresentative only because of the publicity it has received, is apparently the first in which military officers have been tried and convicted for human rights atrocities.

In the case of Santiago Atitlan, Army Sgt. Maj. Efrain Gonzalez was sentenced to 16 years in prison after being convicted of firing—while under the influence of alcohol—indiscriminately against the people of Santiago Atitlan. Lt. Jose Rodriguez was sentenced to 4 years for his role in intimidating the public.

Mr. President, critics have made several important observations in the handling of the case of this atrocity.

These critics point out that there was virtually no investigation into the facts of the massacre.

The military court was remiss in not having visited the scene of the crime, autopsies of the victims were not carried out, and witnesses to the violence were not interviewed.

Although the military has sought to portray this barbarity as an isolated act of a few individuals, it is clear that these officers' commander also bears responsibility for this crime—yet he was not charged.

Furthermore Guatemalan Attorney General Acisclo Valladares Morina has taken the extraordinary step of appealing Garcia Gonzalez' sentence in an effort to win a longer prison term. He, too, deserves our praise and support for his courage and demonstration of civic responsibility.

Mr. President, I might also point out that although the Guatemalan parliament has authorized an indemnization to be paid to the survivors of this tragedy, and to the relatives of those killed, such payments have not yet been made.

Recently, Jose Sosof Coo, a teenage victim of the military attack, recently visited my office. Jose is now confined to a wheelchair and has been undergoing painful, and expensive, care in the United States.

I urge President Serrano to take steps to assure that Jose and other relatives and victims are not subject to reprisal from vengeful members of the security forces. Justice requires that the Guatemalan state seek to repair the damage visited upon these people.

Clearly, while we celebrate the important step in the strengthening of the rule of law represented in the conviction of the two army men, there is still a way to go before one can say that justice has truly been served.

This being said, it would also be an enormous injustice to remain silent and not to recognize President Serrano's efforts to restore Guatemala's long-trampled sense of justice and human dignity. For that reason I offer my comments and praise today.•

WORLD SERIES CHAMPION MINNESOTA TWINS

• Mr. DURENBERGER. Mr. President, I rise today to salute the World Series champion Minnesota Twins. By virtue of Sunday night's thrilling 1 to 0 victory over the Atlanta Braves, they once again reign as baseball's world champions.

Much has been made of the Twins remarkable last-to-first turnaround this season, yet an accomplishment of this magnitude does not occur without hard work and dedication. Each and every member of this year's squad took the motto "Work Hard, Play Hard" to heart and this attitude has resulted in the Twins second world championship in the past 5 years.

Led by World Series MVP Jack Morris, the bats of Chuck Knoblauch and Brian Harper, and a host of brilliant defensive plays, including Greg Gagne's contributions at shortstop, the Twins emerged from what was one of baseball's greatest fall classics. Whether it was Kirby Puckett climbing the fence to rob Ron Gant of an RBI extra-base hit, Dan Gladden stretching a single in the bottom of the 10th in game 7, or Brian Harper's splendid play behind the plate during game 4, the entire Nation watched as the Minnesota Twins and Atlanta Braves battled for the world title in a series which saw an unprecedented five 1-run games.

Finally, I cannot conclude this statement without a few words of praise for the Atlanta Braves. They proved to be a worthy opponent and throughout this past season exhibited a style and grace under pressure which few teams have matched. The National League can be proud of the representation which the Braves provided and the entire Atlanta organization can be proud of their accomplishments.

Mr. President, again I congratulate the Minnesota Twins on becoming baseball's 1991 world champions and I thank them for allowing the fans of Minnesota to be a part of this truly magical season.•

THE THREATENED TATSHENSHINI

• Mr. WIRTH. Mr. President, I would like to speak for a few moments on a subject of deep concern to me—the fate of the Tatshenshini River. The Tatshenshini is the major tributary of the Alsek River of British Columbia and Alaska and is part of one of the great river systems of North America. It drains the pristine wilderness of British Columbia's northwest corner and then crosses into Alaska, flowing through the Wrangell-St. Elis National Park, just north of Glacier Bay National Park, to empty into the Gulf of Alaska.

The future of the Tatshenshini and the wilderness character of the landscape which it dominates is clouded by a proposed copper mine called the Windy Cragg Mountain project. If built, this mine would produce a projected 30,000 tons of copper ore a day. The 6,000-foot summit of Windy Cragg Mountain would be leveled.

Because of the extremely high level of sulphide ore intermixed with the copper ore—six times greater than that of any other mine in British Columbia—and the roadless character of the surrounding area, this project would cause great environmental damage. When sulphide ore is exposed to the air and rain, sulphuric acid is formed. In this case, huge amounts of acid would be produced from the exposed mine tailings and would flow downhill to the Tatshenshini. The very life of the Tatshenshini, and the multimillion-dollar fisheries, the area's recreation economy, and the native cultures that depend on it are threatened.

Mr. President, those of us from the West are well aware of the environmental dangers of mining. Responsible mining operations, which exist throughout Colorado, plan for and mitigate these threats. But we have also been left with the legacy of over a hundred years of mining, much of which took place before many of these threats were well understood and before technology for dealing with them was developed. Many of these sites are now listed as national priorities under Superfund and we have found that the technology for dealing with the toxic pollution produced by many mining operations is still inadequate. This is the case at Windy Cragg, where thousands of gallons of sulphuric acid and other toxic liquids containing heavy metals would be released. The leaching of these wastes would last hundreds if not thousands of years.

I am bringing this matter to the attention of the Senate because this proposal is of international concern. The Tatshenshini flowing into the United States and the livelihoods of our citizens are at stake. Mr. President, I would like to insert some materials in the RECORD that more fully explains this situation and the character of the imperiled Tatshenshini for my colleagues to examine. I hope they will study this situation and reach their own conclusions about its merit. I am confident that once the dangers on this project become known, Americans will decide that its risks are simply too great.

The material follows:

[From the Ottawa Citizen, Sept. 8, 1991]

FIGHTING FOR A NORTHERN TREASURE

(By Anne McIlroy)

DRY BAY, AK.—After floating for days down an untouched strip of water, ice and mountains, the sight of a huge, red-faced man on the all-terrain vehicle piled high with beer comes as a shock.

"Which are the single women?" booms Paul Smith. It's his way of welcoming a group of Tatshenshini River rafters who for 12 days have ridden slate grey waters through the Yukon, northwestern British Columbia, into the Alsek River and out through Alaska to the Pacific Ocean.

Dry Bay, the end of the journey, is a fishing outpost with a wild, free feel to it. The grey beach stretches for kilometers against a dark, brooding sky. Seals bob in the surf, and bald eagles fly overhead. It is part of Glacier Bay National Park, and nobody lives here year round.

Dry Bay has more visitors than usual this year, largely because of the copper mine Toronto-based Geddes. Resources has proposed for Windy Craggy Mountain inland from the Tatshenshini in B.C.

Attracted by reports that one of Canada's last great wilderness areas is in peril, hundreds of people have rafted down the river—called the Tat for short—this summer.

A SPECTACULAR TRIP

The trip is spectacular. With each day the river gets wider, swifter and darker, as sediment and melting ice flows in. Huge glaciers lick at the river banks, and icebergs the watery blue of anti-freeze calve into the water. Bears—grizzly, black and the rare silver-blue glacier bear—roam the mountains that rise from the stony shores, and on this trip, a lone wolf was running along the beach.

But Smith, famous as the only man to ever fall into the frigid Alsek more than once and survive, is a good indication that more than pristine Canadian wilderness is at stake here. For him, and other Alaskans, the real issue is fish. This area is among the most productive salmon fisheries in the state.

"It'll kill the fish. And you fellows will end up paying millions to us because you wrecked our salmon fishery."

Smith is far from an official U.S. spokesman—his other claim to fame is being able to fish with one hand and hold a bear in the other. But U.S. Park officials say he is right with his prediction that the Tatshenshini is an international environmental issue.

"Officially, we are watching the developments. Unofficially, we are very anti-mine," says Greg Dudgeon, a ranger at Glacier Bay National Park.

Although the mine is in Canada, environmentalists on both sides of the border say it could turn the Tatshenshini into a river of acid.

The copper is buried deep in the mountain, and its ore contains high concentrations of sulphur, which when exposed to air and water becomes sulphuric acid.

The company, Geddes Resources, wants to start construction in 1991 and have the $600-million project on line by 1994. Their first plan, which was rejected by the B.C. and federal governments, was to pile the waste rock on glaciers. The revised proposal is to store it under a manmade lake, built with a dam, that will eventually be four kilometers long.

Gerald Harper, the company president, says the mine won't be an environmental disaster. But the area is known for frequent earthquakes and environmentalists say the risk is too high.

For John Mikes, owner of the Canadian River Expeditions rafting company and lead guide on the trip, the issue is a simple one.

All of the arguments—if it will release acid into the river, if it's economically feasible—are really not the important ones. This is a truly beautiful place. Don't mess with it. It's that simple."

Mike makes his living from the river, and has a financial stake in keeping it the way it is.

But his every word shows how much he cares for this land. On a hillside near where a road and bridge to the mine would go, he gave a Sunday sermon on how the develop-

ment would change an area of true wilderness forever.

"If you feel this river should be saved, do something about it," he urged.

In the audience, a special guest was listening.

Pauline Browes, the junior federal environment minister, had arrived by helicopter for three days of official business.

The federal government has yet to take a stand on the Tatshenshini and environmentalists had suggested Browes come north to see exactly what was at stake.

For Mikes, her visit was a coup, even though it meant giving up a sleeping bag for a few cool nights—by accident only one had been packed for Browes and her husband George.

The visit also meant extra stress, B.C. environmentalists have invited politicians into the wilderness before, and bad weather had on several occasions turned the trips into disasters.

Not only that, but most of the rafters were on holidays and for them the visit was good fodder for a joke. They had dubbed the minister Junior Browes before she arrived.

But Browes was on the river for an unbelievable day that left everyone—including a writer for National Geographic—struggling for words that would do it justice.

The confluence of the Tatshenshini and Alsek rivers is a vast grey sea of fresh water ringed by peaks—some laden with glaciers, others soft green mounds and still others chalky grey with thickly forested lower slopes. It was a circle of beauty, a place of overwhelming power and strength. The water was fast, the wind strong and the mountains, everywhere.

The federal government has yet to take a stand on the Tatshenshini, although the revised proposal for the mine is now being screened by the federal and B.C. governments.

Browes, it seems, was moved by her trip.

"I have never seen anything quite so spectacular, so dramatic. If this is going to be destroyed or disturbed it would be a tragedy."

But she wouldn't say whether she felt there should be a mine.

Browes wasn't the only politician to raft down the river this summer. Liberal Environmental critic Paul Martin took his family on a Canadian River Expeditions trip and says he spent a lot of timing wondering what a road and a bridge would do to the area, let alone the mine.

"It would ruin it. The federal government has jurisdiction here. It is a navigable, international water" way. They should get in there and protect it."

[From Borealis 2 (4), 1991]

THE TATSHENSHINI RIVER: SAVING THE HEARTLAND OF A GREAT WILDERNESS

(By Michael Down)

The Tatshenshini River is the main tributary of the mighty Alsek, River, that drains the northwest corner of British Columbia, a region trapped between the state of Alaska and Canada's Yukon Territory. This is also the place where the Pacific and Continental tectonic plates meet. Intense mountain building forces are hard at work here. In a geologic sense, the last ice age is a present reality. To the north are Canada's highest mountains, the Himalayan-sized St. Elias Range. Canada's highest peak, Mt. Logan rises to 19,550 feet (5,958 metres), as sprawling massif so large that it's almost a miniature mountain range in itself. And right off the coast looms the lofty pyramid of Mt. St. Elias, abruptly rising from sea level to a summit of 18,008 feet (5,489 metres) over less than 50 kilometres. This is the single greatest vertical relief to rise from a coastline anywhere on earth.

All this may sound like a wilderness rhapsody. But there is no other way to describe the sheer drama of the Tatshenshini. To the immediate south rises the more compact, but equally dramatic Fairweather Range. Again the mountains rise from the beach and rapidly climb to British Columbia's highest summit. The inaptly named Mt. Fairweather forms a 15,300-foot (4,663 metre) border peak.

Cradled by these two massive coastal mountain ranges is the largest non-polar glacier system in the world. Among the countless icefields and glaciers, eight flow right down to water's edge, where huge chunks of ice calve off, forming icebergs in the fast-flowing lower reaches of the Tatshenshini/Alsek system. Together, these two rivers slice a path through the mountains, breaching the coastal divide and cutting a corridor all the way from the dry willow and birch shrublands of the Yukon interior to the hemlock and spruce rain forests on the Pacific coast. This is a land of extremes, a land of transition, which accounts for a rich diversity of natural ecosystems. In a voyage of 200 kilometres, the river moves through six biogeoclimatic zones, including an unclassified coastal rain forest that is unique in Canada.

Dr. Edgar Wayburn is the elder statesman of Alaska wildlands conservation. Since the early '60s, he and his wife Peggy have been at the forefront of Alaska wilderness battles. They have been exploring the most remote and spectacular corners of the state for a quarter of a century. Among those journeys, a raft trip down the Tatshenshini stands out: "I can personally attest to its magnificence and to its remarkable wilderness qualities. The mine and 70-mile road would be devastating to the best remaining wilderness in the world," said Wayburn, a former president of the Sierra Club.

Although the Tatshenshini/Alsek river system is the third largest in British Columbia, it remains unknown to most residents. But to white water enthusiasts and wilderness rafting aficionados, it is world renowned as one of the best river running experiences anywhere on the planet. Not only is there the grandeur of floating through the heart of glacier-draped mountains, but the salmon-rich river supports an abundance of wildlife. The region is home to significant populations of moose, red fox, wolf, wolverine, mountain goats, bald eagles, gyrfalcons and some rare bird species such as the gray-cheeked thrush, short-billed dowitcher and Hudsonian godwit.

But the most striking wildlife impression comes from the overwhelming presence of big bears. Bob Peart, executive director of the B.C. Outdoor Recreation Council and a past-president of the Canadian Parks and Wilderness Society (CPAWS) took a trip down the Tatshenshini last summer. "I have never seen so many signs of grizzlies in one place before in my life," he said. "There were huge tracks everywhere, torn-up stumps, rooted up shrubs, flowers and piles of big black droppings all over the place. They were always there. Whether you could see them or not, you could sense their presence, their spirit. All the way down the river, I felt like I was in the spirit of the Great Bear."

Field data are sparse, but it seems clear that stretches of the Tatshenshini Valley support some of the highest densities of grizzly bear in the world. In places, there may be as many as one bear every five square kilometres (three square miles). The river's floodplain is the only home in Canada for the Alaskan brown bear. According to the B.C. Wildlife Branch, the gizzly habitat in the valley is rated as "nationally important and unique in Canada." And in keeping with the Tatshenshini's rare qualities, the valley is also the only home in Canada for the rare glacier bear, a peculiar subspecies of black bear named for its silver-blue fur.

In keeping with its propensity for drama, the Tatshenshini not only possesses increasingly rare wilderness qualities, but it also just happens to hold—in nature's ironic way of balancing superlatives—the most massive undeveloped copper deposit known in North America. At the head of Tats creek, a tributary of the Tatshenshini, just above its confluence with the Alsek, is Windy Craggy Mountain. Locked inside Windy Craggy is a miner's treasure, a potential 3.2-billion kilograms of copper. To get at this motherlode, Geddes Resources of Toronto proposes to invest an estimated $600 million in infrastructure centred around an underground operation and a giant open pit up to 550 metres deep. The 6,000-foot (1,828 metre) summit of Windy Craggy Mountain would be levelled.

Reading Geddes' promotional material, the proposed mine sounds like a bonanza. About 900 jobs would be created to construct the project's infrastructure over the first two years. After construction an estimated 600 jobs would be created to operate the mine over a projected life span of 15 years. More than $70 million would be spent annually to produce 30,000 tons per day of copper ore, which is equivalent to one percent of world production. In dollars spent and ore produced, this would be a world-scale mine of mammoth proportions.

But beneath the rosy projections are some serious implications for the environment. The copper itself is laced within a massive sulphide deposit. The ore has a sulphur content of 35 percent—about six times greater than any other mine in B.C. When sulphide ore is mined and exposed to the atmosphere, oxidation takes place and deadly sulphuric acid is formed. At the smaller Equity mine near Houston, B.C. the ore has only six percent sulphur content. Sulphuric acid leaches from the waste rock and tailings, and it will need to be continually neutralized for hundreds, perhaps thousands of years, at a cost of $1 million a year. Impossible to completely control, this acid rock drainage threatens to poison the aquatic ecosystem of the Bulkley River and destroy a major fishery.

A similar scenario, except on a grander scale, may be in store for the Tatshenshini. Mining operations are expected to generate about 250 million tons of tailings and waste rock with acid-generating potential. To keep the waste rock from coming in contact with air, Geddes proposes to bury it underwater in a man-made reservoir, drowning the upper Tats Creek Valley in a potentially toxic lake, four kilometres long and one kilometre wide. The reservoir will be created by two huge earth-fill dams, the downstream one as high as a football field is long.

Due to the porous nature of the underlying glacial sands and gravels, the company's consultants estimate as much as 100,000 gallons of tailings liquid, laced with the toxic metals, may seep through the dams and sides of the reservoir. All of the seeping tailings will have to be monitored, trapped and neutralized for many years after the mine closes.

Further complicating matters is the fact that this proposed mine sits squarely in the

middle of one of Canada's most earthquake-prone areas. Those same tectonic forces that are thrusting the region's mountain ranges skyward are also keeping things moving and shaking at ground level. Only 20 kilometres to the west is the highly active Border Fault, and 50 kilometres further west is the equally active Fairweather Fault. Two lesser faults slice almost directly through the mine area. The area had two earthquakes that registered over 6.4 on the Richter scale last spring alone. These were strong enough to make plaster fall off cracking walls. But these are small compared to the monumental quake of 1958, that measured 7.9 and caused a tidal wave to wash forests from slopes several hundred feet above sea level in nearby Lituya Bay. And in 1899, the greatest quake ever recorded on the North American continent struck, with its epicentre only 120 kilometres away. Registering at 8.6 on the Richter scale, it shattered glaciers and uplifted cliffs more than 12 metres on the beach. Earthquakes of this size produce catastrophic results, with the ground rising and falling in waves, generating large landslides and floods and destroying buildings and bridges.

The prospect of locating a mine in the maw of a major continental fault concerns people like Paul George, a staunch defender of wilderness and a director of the Western Canadian Wilderness Committee. "If the mine development goes ahead, the Tatshenshini would be under threat from an acid spill disaster for hundreds or perhaps thousands of years," he says. "It's like putting a nuclear waste dump on top of the San Andreas fault."

Such a catastrophe could contaminate or even wipe out the salmon runs of the Tatshenshini/Alsek system. At risk upstream is the traditional native food fishery of the Champagne-Aishihik band. They have filed a land claim on the area. Also downstream are the multimillion dollar commercial fisheries at Dry Bay and out of the Fairweather Banks.

Even today, as in the days of the Gold rush, a camp city springs to life on the banks of the Alsek above Dry Bay each year. It is populated by independent-minded fishermen, panning the river for another kind of gold. Like their cousins upcoast in the village of Yukatat, they believe their livelihoods are threatened by the Windy Craggy proposal.

Neither is the prospect appealing to American officials in Alaska. Commenting on the original mine plane, Steve Pennoyer, Alaska director for the U.S. Dept. of Commerce Marine Fisheries Service says, "It does not appear that the environmental and engineering problems associated with this project can be resolved with existing technology. We believe the long-term environmental degradation likely to result from the proposed Windy Craggy mine outweighs any economic gains that may accrue.

Last spring opinions such as these led the B.C. Government to reject Geddes' initial mine plan at Stage 1 of the Mine Development Review Process. Many reasons were cited, but the primary one was that the company had inadequately assessed the hazards of acid rock drainage. By year's end, the company submitted a revised plan. It proposed to consolidate the two initially proposed open pits into one by taking the mine underground earlier. The revised plan also attempts to ensure that all of the sulphur-laden waste rock ends up in a tailings reservoir, rather than being dumped on the glacier. To pay for the increased costs Geddes proposed to increase production by 50 percent, from 20,000 to 30,000 tonnes per day.

The changes reduce waste rock by 30 percent, but it leaves almost no margin for error. Critics claim the enormous risks posed by acid rock drainage have not been solved. The plan offers assurances that the "latest and best technology" will be used, but according to U.S. agencies reviewing the plan, "latest" is still unproven and unreliable; and "best" is unacceptable given the consensus understanding of experts that dealing with acid rock drainage is poorly understood and needs many more years of study.

Steve Fortner lives in Victoria, where he has worked for a number of West Coast wilderness groups over the years. A jeweller by trade, he approaches issues with the same precision and patience as he does his work. But he has little patience for the company's approach to environmental concerns: "In my opinion the new mine plan seems like the latest attempt by Geddes to downplay the extreme dangers of the project. It reads more like a salesman's effort to overcome objections than a serious consideration of what is really at stake. And it seems empty when you see how much of the company's effort is going into lobbying the government for quick approval," he says.

But Geddes president, Gerald Harper doesn't understand all the fuss. He said, "This isn't pristine wilderness, it's barren land." He's convinced that Geddes can undertake the project and minimize the risks.

However, if the project goes ahead and acid rock drainage is a problem, it will be the abundant wildlife populations that depend on the fish, particularly the grizzly, that will be affected. Equally threatening to the Tatshenshini wilderness is the proposed road needed to haul out copper concentrate and truck in fuel and supplies to the airstrip and 600 workers at Tats Creek. Access would require 104 kilometres of new, all-weather road, through what is now a pristine wilderness. It would begin by traversing through Scottie Pass, the only wintering range of the dall sheep found in B.C. The road would then enter the Tatshenshini watershed and follow the river's edge for 25 kilometers, cutting right through open alpine and some of the prime grizzly denning habitat. With a 45-ton ore truck passing every 10 minutes, 24 hours a day, 365 days a year—animal deaths from collisions and obstructed migratory paths could reach tragic proportions. Wildlife not driven away would inevitably be exposed to increased hunting and poaching pressure as hunters gained access to the area on new mine roads.

More than 20 million gallons of diesel fuel would have to be transported in each year to provide power for the operation. Truck crashes and toxic ore spills pose risks to the river. Of the 11 bridges planned, the three largest would require dredging of the river, which would seriously affect salmon spawning and rearing habitat. At the confluence of the Tatshenshini and the O'Connor rivers, a 200-metre bridge, the length of two football fields, would be required.

The river's adventure tourism industry generates $1 million annually in direct revenues. This is projected to double in the future. But, operators say their businesses would suffer a crushing blow if the river lost its reputation for wilderness raft trips. Shelley Goble runs Suskwa Adventure Outfitters, one of more than a dozen commercial rafting operators with licenses for the river.

"Geddes likes to play up the recreational opportunities the road would supposedly open up," she quips. "Just think of all the jet boats that could get in there! And there would be lots of sport dodging those huge ore trucks roaring around those tight corners every few minutes."

"But seriously, with its dangerous heavy traffic, they won't allow recreationists in anyway. Road-accessed river recreation is plentiful just about everywhere else in B.C. and the Yukon. My customers pay top dollar and come from all over because they want something you can hardly find anywhere else in the world: two weeks of rafting pure wilderness. Trying to hide the road behind some bushes just won't do. If this project goes ahead, the valley will become the mere commonplace and my customers just won't come."

The B.C. Ministry of Parks agrees that the Tatshenshini is "in the top echelon of wilderness rivers." Once paved, its wilderness would be lost forever. It would be tragic if the proposed road and its bridges were built only to have the mine shut down because of a drop in the price of copper. Such was the case in the early '80s, when the entire town of Kitsault on Alice Arm was abandoned after the market for molybdenum crashed. History threatens to repeat itself. With depressed coal prices, the massive NorthEast coal project in B.C., which has received $1.5 billion of public investment, may be at risk.

Copper is a commonly available commodity, for which demand is expected to decline. Its biggest application has been in telecommunications, but fiber optics is beginning to replace copper wire at an accelerating pace. High output transistors are now displacing roughly 30 pounds of copper used to manufacture every new automobile. And new technologies for recycling cooper are developing. It is expected that within 10 to 20 years, 60 to 75 percent of the world's copper needs could be met by recycled material. With the fiber optics revolution, some of the major future sources of copper may turn out to be cities like Tokyo and New York.

With dropping demand and expected increases in supply resulting from major new mines in Chile, "the outlook for copper is not very bright beyond 1991," stated Scotia McLeod's January 1990 edition of the Mining Equity Adviser.

The company says their project poses minimal environmental risk, and that their operating methods are above reproach. But their track record suggests otherwise. "As I see it government rejection of their initial mine plan makes it clear: Geddes' proposals consistently place economic considerations before environmental ones," says Ethan Askey, a founder of Tatshenshini Wild and a river guide who has guided rafting trips on the Tatshenshini for several years.

"But let's face it. If you've got to cut environmental corners to turn a profit, then the project is a bust. Geddes seems most concerned with painting themselves as environmentally friendly," said Askey.

Over the last few years, Geddes' proposals have constantly changed. Initially announced as a small, fly-in gold mine, the idea fell apart when drilling tests revealed that gold percentages were to low to be commercially viable. To retain their investment, Geddes dumped gold and gambled on copper on a big scale. They assumed that high copper prices, then peaking at $1.30 US a pound, would prevail. But the value of copper has since declined. The World Bank forecasts a 35 percent drop, to a price of $0.85 US, by the middle of the decade. With fluctuating conditions, the Windy Craggy proposal has grown from a compact 3,500-ton per day (tpd) operation to 15,000 tpd, to 20,000 tpd and now it's a whopping 30,000 tpd.

The end of the road for the Windy Craggy mine in Haines, Alaska, a small town of 1,200

people nestled under 1,800-metre-high snow-capped mountains at the end of America's longest fjord, the Lynn Canal. Here, Geddes proposes to upgrade a deep-sea port to accommodate large-hulled ore tankers to ship copper to Asian smelters.

The town's two economic mainstays, tourism and fishing, worth $3 million $17 million respectively per year, would also be hard hit. "It would seriously disrupt the lifestyle that many of us who live in Haines have chosen," says Tom Ely, president of the Lynn Canal Conservation Society, "It's our rural quiet lifestyle and the peaceful wilderness atmosphere the most of us here enjoy," he says

A constant convoy of heavy ore trucks would rumble down mainstreet Haines, with all the noise, toxic dust and safety problems expected from transporting 330,000 tons of hazardous materials, including high explosives, along with the copper ore. The nearby harbor of Skagway, an ore shipping port handling lead-zinc concentrates from Yukon mines, had to be declared a super-fund clean-up zone by the U.S. Environmental Protection Agency (EPA) as a consequence of lead and zinc poisoning. It's not surprising then, that a poll conducted in Haines Borough last summer found 60 percent of residents were opposed to the project and that 69 percent were against the truck traffic. But Geddes president, Gerald Harper vowed at a community meeting last November: "A popular vote of the people of Haines, Alaska or their local government against the mine will not stop us."

Above the town of Haines, the road winds up along the Chilkat River right through the Chilkat Eagle Reserve, sanctuary for 3,500 wintering bald eagles that congregate each year to prey on the vast runs of sockeye salmon. The salmon are fighting their way upstream to spawn and die.

The road would need to be widened, at a cost of $72 million. The risk is that the river will be affected by the development and threatened by spills. Even Geddes has admitted spills will occur. Studies have shown that copper contamination interferes with the ability of salmon smelt to migrate, depleting the population and reducing the eagle's food supply.

Americans are fiercely proud of their national symbol, the bald eagle. And armed with the Bald Eagle Protection Act, they can be expected to fight hard to protect it. They are gearing up now to help protect the Tatshenshini, which since it flows into the Alsek, is an international river. Acid rock drainage, like any other environmental threat, does not recognize political boundaries and some of the worst of its effect may be felt downstream in the United States.

Nevin Holmberg, a Juneau, Alaska-based field supervisor of the U.S. Department of the Interior, agrees. In his opinion of the open-pit mine would poison the valley's aquatic ecosystem long after the miners have packed up their picks and shovels. "The size of the Geddes project, its remoteness and the harsh climate of the locale, when combined with fish and wildlife resources of acknowledged world-class economic, recreational and ecological significance creates a potential of ultimately massive environmental loss. Such loss cannot be restored once damaged. We recommend it not be permitted," he said in a submission to the Mine Development Review.

At the other end of the Tatshenshini River, just 38 kilometres downstream from Windy Craggy, is the international boundary and the edge of one of America's most beautiful and celebrated national parks, Glacier Bay. It was established as a result of the efforts of America's grandfather of conservation, John Muir. The fragile backcountry of Glacier Bay would be opened up and seriously jeopardized if a road is built down the Tatshenshini. Marvin Jensen, National Parks Service superintendent for Glacier Bay stated in a letter to the B.C. government: "The mine would initiate effects in Canada, but the culminations of certain impacts would be hardest felt in Glacier Bay National Park. A bridge and visible access road would have very serious deleterious effects on what is now one of the premier float trips in the world."

And, of course, a spill would disrupt its ecology on a massive scale. Glacier Bay has been designated as a World Biosphere Reserve by the United Nations. Building a mine nearby could be interpreted as a threat to the park and its status under the U.N. designation.

Glacier Bay protects 1.34 million hectares of wilderness. In 1980, the U.S. Congress extended the boundaries of Glacier Bay to take in the Alsek River. To the north, beginning at the Yukon border, the Alsek is a Canadian Heritage River and 2.18 million hectares of wilderness are also protected in Canada's Kluane National Park Reserve. Kluane also carries a U.N. designation as a World Heritage Site. And adjacent to Kluane on the west is Wrangell-St. Elias National Park, America's largest national park at 4.45 million hectares. All of the governments surrounding the Tatshenshini have recognized its outstanding natural features and given it the highest order of protection; except for the province of British Columbia.

But the B.C. portion of the Tatshenshini/Alsek system is the heartland of the entire wilderness complex. It is the only major valley corridor that permits wildlife to pass through these high coastal mountain ranges. The integrity of protected wilderness in Alaska and the Yukon depends on protecting the B.C. section. That was a fact recognized by Congress, when it urged Canada to protect the Tatshenshini. Even the B.C. government has recognized the importance of the area. Parks Plan '90, an initiative of the B.C. Ministry of Parks to complete the provincial parks system, is studying the area for protected wilderness designation. And the International Union for the Conservation of Nature (IUCN) has recommended the federal government protect the area with national park or equivalent status. With the addition of the 0.92-million hectares of the Tatshenshini to adjacent national parks, an international park system totalling 9.1 million hectares—three times the size of Vancouver Island—would be created. This would form the largest wilderness preserve in the world.

It's no surprise that a private corporation like Geddes downplays the wilderness value of the Tatshenshini. But environmental groups are becoming concerned by what appears to be a fast-tracking of the project. After a public outcry, the Mine Development Steering Committee told the company to revise its plan, which was rejected for several reasons but chiefly because of the acid rock drainage problem.

But the revised plan addresses only the mine itself and not its impacts on the valley. The revised plan proposes a 50 percent increase in daily production and the effects of that increase could reach far beyond the mine.

Colin Rankin is a moderate, soft-spoken vice-chair of the B.C. chapter of the Canadian Parks and Wilderness Society, one of several groups fighting the proposed mine in B.C. On this issue, he is unusually outspoken: "To propose such a massive development with major environmental implications before the area has been adequately assessed for wilderness values is shortsighted in the extreme."

Reinforcing CPAWS, WCWC and Tatshenshini Wild is a growing coalition of heavy-hitting eastern Canadian and American groups with a stake in the Tat. According to Tom Cassidy, a spokesman for American Rivers, "Protection of the Tatshenshini is a priority for American conservationists. That's why the Tat is number two on the 10 most endangered rivers list. The proposal by Geddes to expand the scale of the mine only increases the threat. It also increases our resolve, along with that of the other major U.S. groups, such as the National Audubon Society and Sierra Club, to strongly oppose the destruction of the Tatshenshini's extraordinary wilderness values."

A continent-wide campaign is quickly taking shape. Elizabeth May served as senior policy advisor to former environment minister Tom McMillan. She served notice at Geddes' annual general meeting last spring that shareholders should be prepared for long delays and fierce opposition to Windy Craggy. In over a decade and a half of environmental activism, she says she has never seen support for an issue grow so quickly. "This is not something that is coming from a handful of people," says May. "It took 12 years of effort for South Moresby to reach this level of concern."

Like South Moresby, the Tatshenshini campaign has a certain mystique. It is a river many people will never see, but it has already fired the imagination of activists from across the continent. Far from their backyards, they are taking time from local issues to work for a mysterious valley with a magical name: the Tatshenshini. This upwelling of support gives Ric Careless, this year's winner of the prestigious *Equinox* Citation for environmental achievement, great faith in the future of the Tatshenshini. "This river has cast a spell that's invoked a deep sense of caring and commitment in people I've talked to all over the continent. And it's no wonder: it's North America's greatest wilderness, threatened by one of North America's biggest mines."

"The campaign to save the Tat is the Grand Canyon of the 1990s," says Careless, with a smile. "What a privilege to be part of one of the greatest wilderness efforts of all time. And the best part is we know we are going to win."•

TIMBER COMMUNITIES FACE CATASTROPHIC JOB LOSS

• Mr. GORTON. Mr. President, recently I wrote to constituents in Washington State and solicited their opinions on the Fish and Wildlife Service's proposal to set aside 11.6 million acres of land for protection of the spotted owl. As you know, I have taken a firm position on this issue. I believe that any steps the U.S. Government takes to ensure the protection of the spotted owl also must take into account the effect those steps will have on people. I believe that owls are important, but I also believe that people are at least as important.

The response I received was spirited and indicative of the battle currently

being waged over the protection of the owl. Many agreed with my position that we must reduce the spotted owl set-asides. What may surprise some people is that a lot of those who agreed were people not involved in the logging industry. Insurance agents, motel owners, car mechanics, people from all walks realize how these huge set-asides would affect them, their jobs, and their communities. They, too, believe that government has gone too far.

Conversely, and not surprisingly, some constituents disagreed with my position. They talked about protecting ecosystems, biospheres, and the owl as an indicator species. They are convinced that we must stop logging on this land not just because of the spotted owl but because they believe continued logging on this land is harmful to the entire global environment. I disagree.

Washington State is blessed with the kind of growing conditions which allow us to plant, cut, and replant in a sustained yield cycle. To those who say we are running out of logs, I would point out a 1989 University of Washington Forestry School study which shows we should have a stable supply of logs for the next decade and then the supply will jump sharply as young trees reach harvestable size. We are not running out of trees and we are not harming the environment by cutting trees on a sustainable-yield basis.

I am firmly committed to solving the timber crisis in the Northwest and will do whatever I can to reach a solution.●

COMMENDING DePAUW UNIVERSITY

● Mr. COATS. Mr. President, today I rise to congratulate the students at DePauw University on their being named by President Bush as the 592d daily point of light for the Nation.

DePauw University is located in Greencastle, IN, and over 65 percent of the student body have participated in activities through the university's community service programs. These programs include weekend group service projects in innercity Indianapolis and one-on-one voluntary activities in rural Putnam County. For 17 years, this program has given students an opportunity to augment the level of voluntarism at the university.

In 1990, nearly 700 students did such activities as visit prison inmates, serve as Head Start classroom aides, and adopt senior citizens, and provide parenting training for unwed mothers. To provide this ongoing companionship and support, students are specially trained for their particular program. Groups of students spent weekends building and repairing homes, working for the nature conservancy, or other community efforts. Travel to Third World countries and to depressed areas in the United States gave students an opportunity to construct or repair buildings, provide public health education, and offer dental care instruction.

These students can be a model for all of us to do more for those in need. Needs exist in all communities and are of every variety, but few individuals are active in volunteering. The DePauw students are outstanding examples of what it means to give of oneself to others. We all benefit from their remarkable efforts.●

FREEDOM FOR THE OPPRESSED

● Mr. D'AMATO. Mr. President, I rise today in support of Senate Concurrent Resolution 69, a resolution expressing concern for the freedom of emigration and travel rights for Syrian Jews. I urge my colleagues to join me in cosponsoring this resolution.

As democracy sweeps the world, one nation in particular, Syria, continues to ignore this trend. The Demon of Damascus, Hafez Assad, has isolated 4,000 Syrian Jews in ghettos, subjugating them to massive oppression and discrimination, typical of this dictatorial regime possessing such a long record of human rights abuses. It is our duty to seek freedom for these forgotten people. Syrian Jews must be afforded the fundamental rights of freedom of travel and freedom of emigration.

For far too long, Assad has subjected Syria's Jews to constant harassment and surveillance by his security police, the Mukhabarat, keeping files on each of the community's members and following their every move. Typical of these masters of darkness, they monitor all contacts between Syrian Jews and foreigners. Additionally, they monitor all mail and phone calls coming to and from the Jewish community.

Syrian anti-Semitism has even led to a limitation of the educational abilities of Syrian Jewry and has relegated them to menial, low-paying jobs. The community's religious leaders must report regularly to the Mukhabarat and religious instruction in Hebrew is strictly forbidden.

The treatment of Syria's Jewish population merits worldwide outrage. It runs counter to everything for which the civilized world stands. In this light, we must be mindful that as the 53d anniversary of Kristallnacht, the beginning of the Holocaust, approaches, the oppression of any minority cannot be forgiven. We must take all steps to insure that the fundamental right to choose where one may live, should be guaranteed for all.

Syria's 4,000 Jews deserve this right and are deprived of it. Our efforts on behalf of those who lack to the ability to defend their own freedom must be relentless. Let us take all actions necessary to insure free and unimpeded emigration and travel rights for the 4,000 Jews of Syria.

In conclusion, by our joining together in cosponsorship of this resolution, we will help see to it that the Jewish hostages of Syria are not forgotten in the ongoing proceedings in Madrid.●

CESAR ODIO, RECIPIENT OF 1991 MOST VALUABLE PUBLIC OFFICIAL AWARD

● Mr. MACK. Mr. President, I rise today to bring to the attention of my colleagues a person whom I believe deserves special recognition.

Mr. Cesar Odio, the city manager of Miami, FL, has recently been selected as one of seven recipients of the 1991 Most Valuable Public Official Award which is selected by City and State magazine.

Cesar was born and educated in Havana, Cuba. He studied business administration at Havana University, then earned a bachelors degree in public administration from Florida Memorial College. Mr. Odio is married to Marian Trio, the daughter of a former Cuban President. He is the father of five children.

Before joining the city managers office of Miami in 1979, Cesar served as vice president and operations manager with a Miami-based trucking firm. His business background has helped to elevate his awareness of personal issues. This formed the foundation of Cesar's managerial philosophy which has enabled him to deal effectively with the problems associated with the day-to-day operations of a city the size of Miami.

Conservative fiscal responsibility coupled with functional relations with organized labor, has helped Mr. Odio successfully tackle the challenges facing Miami. Cesar has forged an effective partnership between the unions and the administration of the city.

Mr. Odio realizes that long-term solutions to inner-city problems will require innovative thinking. The city is doing its part to do more with less by trimming daily operation costs, by eliminating bureaucracy in the city managers office and through departmental consolidation. These adjustments are just the beginning, but a significant step in a responsible direction. Mr. President, Mr. Odio has clearly demonstrated his value to the citizens of Miami. I know my colleagues here in the Senate join me in wishing him well in his continuing efforts to manage the city of Miami.●

DRUG PREVENTION PROGRAMS IN CALIFORNIA

● Mr. SEYMOUR. Mr. President, I stand today in recognition of two vital and informative drug-prevention program located in California: "Drug Use Is Life Abuse" and "Celebrities for a Drug-Free America".

As a support group of the Orange County sheriff's advisory council, the "Drug Use Is Life Abuse" program works to coordinate drug use prevention and awareness programs in the Orange County area of California. The "Drug Use Is Life Abuse" strategic plan calls for approaching the drug awareness and prevention issue from three angles: First, youth and education; second, the workplace; and third, the general public. This approach has been extremely well-received by the local community, and has educated over 90,000 schoolchildren since January 1989.

The President's Drug Advisory Council recognized "Drug Use Is Life Abuse" as one of the top three drug prevention programs in the Nation and highlighted the program last year at their national leadership forum. The "Drug Use Is Life Abuse" program intends to continue to play a major role in the countywide and nationwide efforts to eliminate the demand for illicit drugs.

"Celebrities for a Drug Free America" was founded by Ben Vereen in 1990. The purpose of the program is to utilize the fame of celebrities in communicating to young people the horrors of drug use and abuse. Many celebrities give generously of their time and resources in traveling throughout the United States and meeting with students and youngsters all across America. These celebrities are deglamorizing drug-use by effectively communicating the harsh facts and grim realities of the lives of social users and drug addicts. Young people place a high significance on the advice of celebrities, such as Ben Vereen, therefore "Celebrities for a Drug Free America" is truly making progress in our war on drugs.

I want to commend both of these worthwhile programs for their selfless efforts on behalf of the people of America. On Saturday, November 9, 1991, these programs are joining for a celebrities gala for a drug free America in Orange County, CA. All proceeds from the event will be used to further both of these two fine programs, and will enable our communites to continue to benefit from the "Drug Use Is Life Abuse" and "Celebrities for a Drug Free America" programs. I will continue to support these programs in their efforts to make the United States of America free from drugs.●

FORMER COUNTY LEGISLATOR JOE ESPOSITO

● Mr. D'AMATO. Mr. President, I am proud to stand here today to pay tribute to a friend who personifies the very best of America. He is Mr. Joe Esposito, the former county legislator from the 28th District from Rochester, NY. Joe Esposito is a friendly neighborhood barber, an active member of Holy Apostles Church, and the Gaeta Society of Monroe County "Man of the Year."

Joe has spent his life serving others from his barber shop and from the political arena. Joe has served five consecutive terms in the Rochester County Legislature. He served from January 1968 through December 1977. It's interesting to note that in 1971 his son Ralph ran for office and won a town of Gates legislative seat. As such, the Esposito's were the only father and son team to serve simultaneously in the State of New York.

Joe Esposito is a devoted husband, married for 50 years to wife Jean, and father of two, Jo Lynn and Ralph. Some of Mr. Esposito's other associations include being on the board of directors of the Monroe County Fair Association, and chairing the Monroe County Board of Ethics, Seneca Parks Master Plan Committee, Monroe County Parks Committee, and the Supervisors/Legislators Reunion Committee.

One of Joe Esposito's favorite accomplishments was when he ran Youth Town, where boys from 10- to 18-years-old learned to set up their own government. The boys elected their own mayor and conducted mock trials.

Mr. Esposito has been of service to the people of Monroe County and others. In fact, when I first ran for the Senate in 1980 one of my first stops on the campaign trail was Monroe County. While there I held a press conference on the steps of Joe Esposito's Lyle Avenue barber shop. Afterward, Joe and I took a walking tour of the neighborhood.

Joe Esposito is a great guy and it gives me great pleasure to salute him today.●

SPR PROVISIONS OF INTERIOR APPROPRIATIONS BILL

● Mr. JOHNSTON. Mr. President, Public Law 101–383, approved last year by Congress and signed by the President, allows the Department of Energy [DOE] to pursue oil leasing as an alternative means of filling the strategic petroleum reserve. This law reflects the consensus of Congress and the administration that there is good potential for the SPR to be filled quickly and at low cost through oil leasing.

Unfortunately, there appears to be no consensus on the degree to which Congress should review oil leases that the Department might negotiate. The authorizing committees seem to have one view; the appropriating committees seem to have another view. However, this should not obscure the fact that Congress does want the Department to proceed with negotiations. In particular, I want potential parties to oil leases to know that Congress supports the Department in this endeavor.

Protracted and difficult negotiations in this year's Interior appropriations conference over oil leasing produced a result that is far from perfect in my mind. However, I want to emphasize that the final compromise provision specifically allows DOE to proceed with negotiations. The Interior appropriations repeals last year's permanent ban on the use of funds for oil leasing. Instead, there is a temporary ban on the use of funds in fiscal year 1992.

DOE should indeed pursue negotiations. In addition, there are two avenues by which DOE could conclude negotiations and sign a contract in fiscal year 1992. First, DOE could enter a lease providing for payments to begin in fiscal year 1992, and Congress could lift the funding ban in a supplemental appropriations bill. I have no doubt that any such lease that DOE signs would be a good one. It would provide oil for the SPR at a cost lower than direct purchase, and the leased oil would provide the same energy security benefits as purchased oil. I also have no doubt that Congress would recognize this and lift the fiscal year 1992 ban on oil leasing. The second avenue would be for DOE to sign a lease in fiscal year 1992 with payments not beginning until fiscal year 1993. I am confident that such a lease would be beneficial and that Congress would not revive the expiring ban on oil leasing.

I look forward to the results of the Department's ongoing efforts in this area.●

BILL PLACED ON CALENDAR—S. 1891

Mr. SIMPSON. Mr. President, I ask unanimous consent that S. 1891, introduced today by Senators THURMOND and HOLLINGS, be placed upon the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

ABANDONED INFANTS ASSISTANCE ACT AMENDMENTS OF 1991

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 240, S. 1532, regarding the Abandoned Infants Assistance Act.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1532) to revise and extend the programs under the Abandoned Infants Assistance Act of 1988, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Infants Assistance Act Amendments of 1991".

SEC. 2. FINDINGS.

Section 2 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) in paragraph (6), by striking ", and the number of cases has doubled within the last 13 months;

(2) in paragraph (9)—

(A) by inserting after "counseling services" the following: "early intervention and developmental services,"; and

(B) by striking "and" at the end thereof;

(3) by redesignating paragraph (10) as paragraph (11); and

(4) by inserting after paragraph (9) the following new paragraph:

"(10) one of the goals of these comprehensive services shall be to support the family, which includes the child and the natural, foster and adoptive families, with the aim of preventing abandonment of the child; and".

SEC. 3. PROGRAM OF DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Section 101(a) of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) in the matter preceding paragraph (1), by striking "may make grants" and inserting the following: "shall make grants from funds appropriated pursuant to section 104(a)";

(2) in paragraph (1), by inserting before the semicolon the following: ", including the provision of services to all members of the natural family for any condition that increases the probability of abandonment of an infant or young child";

(3) in paragraph (2), by inserting before the semicolon "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile";

(4) in paragraph (3), by inserting after "those with acquired immune deficiency syndrome" the following: "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile,";

(5) in paragraph (4)—

(A) by striking "children," and inserting the following: "children (including the actual expenses of the persons receiving the services),"; and

(B) by inserting "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or medically fragile children" before the semicolon;

(6) in paragraph (5), to read as follows:

"(5) to provide residential care programs for abandoned infants and young children, who are unable to reside with their natural families or be placed in foster family care, particularly those with acquired immune deficiency or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile;".

(7) in paragraph (6), by amending the paragraph to read as follows:

"(6) to carry out programs and services including respite care, family support groups, parenting skills, in-home support services, the use of volunteers and individual counselors and payment of expenses to attend such groups and provide alternative care) for natural, foster, and adoptive families of infants and young children with acquired immune deficiency syndrome, or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or medically fragile children and young persons; and"; and

(8) in paragraph (7), by inserting before the period "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile.".

(b) COMPREHENSIVE SERVICE CENTERS.—Section 101 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by redesignating subsections (b) through (f) as subsections (c) through (g); and

(2) by inserting after subsection (a) the following new subsection:

"(b) COMPREHENSIVE SERVICE CENTERS.—

"(1) The Secretary shall make grants from funds appropriated pursuant to subsection 104(b) to fund a demonstration program to enable public and nonprofit private entities to plan, coordinate and establish model comprehensive service centers. These centers shall provide or offer access to children and to natural, foster and adoptive families covered under the Act in order to strengthen the family unit, or ameliorate or prevent conditions that increase the probability of improper care or abandonment. These centers shall—

"(A) coordinate, at one location (which may include schools) the provision of services, including social service, child protection, health, and education/training components, to those family members in need of such services;

"(B) be conducted in a setting convenient to, and easily accessible by, large numbers of natural, foster, and adoptive families, particularly those providing services to infants and children with acquired immune deficiency syndrome or medically fragile conditions, or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol; and

"(C) involve, to the maximum extent possible, community-based and nonprofit organizations that have demonstrated expertise in the operation of such programs or that demonstrate the potential expertise.

The Secretary shall make grants under this subsection based on the necessity and number of services to be offered. The Secretary shall prioritize the applications upon the need for such services, as evidenced by the relative numbers of infants and young children covered under this Act to be served.

"(2) In the case of public or nonprofit private entities that have been providing similar comprehensive services under grants made under subsection (a) before the date of the enactment of the Abandoned Infants Assistance Act Amendments of 1991, the Secretary shall make provision to transition these projects, upon application by said public or nonprofit private entity for such transition, to this program during the first period for which funds are made available under section 104(b) for this subsection, provided that the Secretary shall make provision in such transition for the expansion, over a period of no more than 2 years, to encompass all of the services required under this subsection.".

(c) ADMINISTRATION OF GRANT.—Section 101(d) of the Abandoned Infants Assistance Act of 1988, as redesignated by subsection (b)(1) of this section, is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D);

(2) in the matter preceding subparagraph (A) (as so redesignated), by striking "(d) ADMINISTRATION" and all that follows through "The Secretary" and inserting the following:

"(d) ADMINISTRATION OF GRANT.—

"(1) The Secretary";

(3) by moving each of subparagraphs (A) through (D) (as so redesignated) 2 ems to the right; and

(4) by adding at the end the following new paragraph:

"(2) Subject to the availability of funds, the Secretary shall make grants under this section for periods of not less than 3 years, with there being 2 automatic extensions of the grants being made absent a finding by the Secretary of substantial nonperformance.".

SEC. 4. EVALUATIONS, STUDIES, AND REPORTS BY SECRETARY.

(a) EVALUATIONS OF DEMONSTRATION PROJECTS.—Section 102(a) of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended by striking "shall," and inserting "shall from funds appropriated under section 104(c),".

(b) SPECIAL NEEDS DISSEMINATION.—Section 102 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(2) by inserting after subsection (a) the following new subsection:

"(b) SPECIAL NEEDS DISSEMINATION.—

"(1) The Secretary shall, from amounts appropriated under section 104(d), maintain the National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families established by the Secretary pursuant to the Abandoned Infants Assistance Act of 1988. The National Resource Center shall assist in identifying, developing and utilizing effective program practices, information and materials in order to meet the service needs of specific groups of individuals, who, on a national or State basis, are disproportionately effected by the drug and alcohol epidemics or who have been historically underserved with respect to the provision of information and services.

"(2) The National Resource Center described in paragraph (1) shall—

"(A) identify innovative or exemplary programs, public and private agencies, resources and support groups;

"(B) disseminate information on prevention and preventive services;

"(C) provide technical assistance, training and consultation to service providers and to State agencies to promote professional competency, service coordination, utilization of resources and the best practices related to the management and administration of abandoned infants assistance programs;

"(D) develop a national network of professionals in the field to serve as consultants and to link such individuals with persons and agencies requiring assistance; and

"(E) identify emerging issues with respect to child welfare, developmental disabilities and maternal and child health, particularly as such issues relate to pre- and post-natal alcohol, drug and pediatric HIV exposure.

"(3) Among the groups to be given priority for these services under this provision are those who are drug or alcohol addicted, individuals with acquired immune deficiency syndrome, minorities, limited English proficient individuals, or those individuals who have been statistically and historically underserved by such information services and dissemination. Information on prevention and services shall also be distributed to the communities of such individuals.

"(4) The Secretary shall enter into contracts or cooperative services under this subsection for periods of not less than 3 years. The Secretary shall extend the contract or grant for 2 additional consecutive 1-year periods absent a finding by the Secretary of substantial nonperformance.";

(3) in paragraph (1)(A) of subsection (c) (as so redesignated), by inserting after "infants who have acquired immune deficiency syndrome", the following: "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or who are medically fragile,"; and

(4) in paragraph (2) of subsection (d) (as so redesignated), by striking "April 1, 1991" and inserting "April 1, 1992".

SEC. 5. DEFINITIONS.

Section 103 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by striking "sec." and all that follows through "the term" and inserting the following:

"SEC. 103. DEFINITIONS.

"For purposes of this title:

"(1) The term"; and

(2) by adding at the end the following new paragraphs:

"(2) The term 'natural family' shall be interpreted to include natural parents, grandparents, familial members (including all siblings and children resident in the household), and others (on a continuing basis) who reside in the household and are in a care-giving situation with respect to infants and young children covered under this Act.

"(3) The term 'medically fragile' includes those infants and young children who exhibit medical, physical or developmental conditions occasioned by pre- or post-natal alcohol and drug exposure.".

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

Section 104 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended by striking "For the purpose" and all that follows and inserting the following:

"(a) DEMONSTRATION GRANTS IN GENERAL.—For the purpose of making grants under section 101(a), there are authorized to be appropriated $15,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(b) COMPREHENSIVE SERVICE CENTERS.—For the purpose of making grants under section 101(b), there are authorized to be appropriated $1,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(c) EVALUATIONS OF DEMONSTRATION PROJECTS.—For the purpose of making grants under section 102(a), there are authorized to be appropriated $1,500,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(d) SPECIAL NEEDS DISSEMINATION.—For the purpose of making grants under section 102(b), there are authorized to be appropriated $5,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(e) ADMINISTRATIVE EXPENSES.—

"(1) In addition to the funds authorized above, there shall be an amount authorized for the purpose of administering this program of 5 percent of the amount appropriated for the programs in fiscal years 1992, 1993, 1994, and 1995.

"(2) The Secretary may not obligate any of the amounts appropriated under paragraph (1) for a fiscal year unless, from the aggregate amounts appropriated under subsections (a) through (d) for the fiscal year, the Secretary has obligated for the purpose described in paragraph (1) an amount equal to the amounts obligated by the Secretary for such purpose in fiscal year 1991.

"(f) AVAILABILITY OF FUNDS.—Funds appropriated under this authority shall remain available until expended.".

SEC. 7. CONFORMING AMENDMENT.

The heading for title I of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended by adding at the end the following: "AND ABANDONMENT PREVENTION PROGRAMS".

SEC. 8. TERMINATION OF PROGRAM.

Section 105 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is repealed.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1532), as amended, was passed as follows:

S. 1532

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Infants Assistance Act Amendments of 1991".

SEC. 2. FINDINGS.

Section 2 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) in paragraph (6), by striking ", and the number of cases has doubled within the last 13 months;

(2) in paragraph (9)—

(A) by inserting after "counseling services" the following: "early intervention and developmental services,"; and

(B) by striking "and" at the end thereof;

(3) by redesignating paragraph (10) as paragraph (11); and

(4) by inserting after paragraph (9) the following new paragraph:

"(10) one of the goals of these comprehensive services shall be to support the family, which includes the child and the natural, foster and adoptive families, with the aim of preventing abandonment of the child; and".

SEC. 3. PROGRAM OF DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Section 101(a) of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) in the matter preceding paragraph (1), by striking "may make grants" and inserting the following: "shall make grants from funds appropriated pursuant to section 104(a)";

(2) in paragraph (1), by inserting before the semicolon the following: ", including the provision of services to all members of the natural family for any condition that increases the probability of abandonment of an infant or young child";

(3) in paragraph (2), by inserting before the semicolon "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile";

(4) in paragraph (3), by inserting after "those with acquired immune deficiency syndrome" the following: "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile,";

(5) in paragraph (4)—

(A) by striking "children," and inserting the following: "children (including the actual expenses of the persons receiving the services),"; and

(B) by inserting "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or medically fragile children" before the semicolon;

(6) in paragraph (5), to read as follows:

"(5) to provide residential care programs for abandoned infants and young children, who are unable to reside with their natural families or be placed in foster family care, particularly those with acquired immune deficiency or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile;".

(7) in paragraph (6), by amending the paragraph to read as follows:

"(6) to carry out programs and services including respite care, family support groups, parenting skills, in-home support services, the use of volunteers and individual counselors and payment of expenses to attend such groups and provide alternative care) for natural, foster, and adoptive families of infants and young children with acquired immune deficiency syndrome, or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or medically fragile children and young persons; and"; and

(8) in paragraph (7), by inserting before the period "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or those who are medically fragile.".

(b) COMPREHENSIVE SERVICE CENTERS.—Section 101 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by redesignating subsections (b) through (f) as subsections (c) through (g); and

(2) by inserting after subsection (a) the following new subsection:

"(b) COMPREHENSIVE SERVICE CENTERS.—

"(1) The Secretary shall make grants from funds appropriated pursuant to subsection 104(b) to fund a demonstration program to enable public and nonprofit private entities to plan, coordinate and establish model comprehensive service centers. These centers shall provide or offer access to children and to natural, foster and adoptive families covered under the Act in order to strengthen the family unit, or ameliorate or prevent conditions that increase the probability of improper care or abandonment. These centers shall—

"(A) coordinate, at one location (which may include schools) the provision of services, including social service, child protection, health, and education/training components, to those family members in need of such services;

"(B) be conducted in a setting convenient to, and easily accessible by, large numbers of natural, foster, and adoptive families, particularly those providing services to infants and children with acquired immune deficiency syndrome or medically fragile conditions, or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol; and

"(C) involve, to the maximum extent possible, community-based and nonprofit organizations that have demonstrated expertise in the operation of such programs or that demonstrate the potential expertise.

The Secretary shall make grants under this subsection based on the necessity and number of services to be offered. The Secretary shall prioritize the applications upon the need for such services, as evidenced by the relative numbers of infants and young children covered under this Act to be served.

"(2) In the case of public or nonprofit private entities that have been providing similar comprehensive services under grants made under subsection (a) before the date of the enactment of the Abandoned Infants Assistance Act Amendments of 1991, the Secretary shall make provision to transition

these projects, upon application by said public or nonprofit private entity for such transition, to this program during the first period for which funds are made available under section 104(b) for this subsection, provided that the Secretary shall make provision in such transition for the expansion, over a period of no more than 2 years, to encompass all of the services required under this subsection.".

(c) ADMINISTRATION OF GRANT.—Section 101(d) of the Abandoned Infants Assistance Act of 1988, as redesignated by subsection (b)(1) of this section, is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D);

(2) in the matter preceding subparagraph (A) (as so redesignated), by striking "(d) ADMINISTRATION" and all that follows through "The Secretary" and inserting the following:

"(d) ADMINISTRATION OF GRANT.—

"(1) The Secretary";

(3) by moving each of subparagraphs (A) through (D) (as so redesignated) 2 ems to the right; and

(4) by adding at the end the following new paragraph:

"(2) Subject to the availability of funds, the Secretary shall make grants under this section for periods of not less than 3 years, with there being 2 automatic extensions of the grants being made absent a finding by the Secretary of substantial nonperformance.".

SEC. 4. EVALUATIONS, STUDIES, AND REPORTS BY SECRETARY.

(a) EVALUATIONS OF DEMONSTRATION PROJECTS.—Section 102(a) of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended by striking "shall," and inserting "shall from funds appropriated under section 104(c),".

(b) SPECIAL NEEDS DISSEMINATION.—Section 102 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(2) by inserting after subsection (a) the following new subsection:

"(b) SPECIAL NEEDS DISSEMINATION.—

"(1) The Secretary shall, from amounts appropriated under section 104(d), maintain the National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families established by the Secretary pursuant to the Abandoned Infants Assistance Act of 1988. The National Resource Center shall assist in identifying, developing and utilizing effective program practices, information and materials in order to meet the service needs of specific groups of individuals, who, on a national or State basis, are disproportionately effected by the drug and alcohol epidemics or who have been historically underserved with respect to the provision of information and services.

"(2) The National Resource Center described in paragraph (1) shall—

"(A) identify innovative or exemplary programs, public and private agencies, resources and support groups;

"(B) disseminate information on prevention and preventive services;

"(C) provide technical assistance, training and consultation to service providers and to State agencies to promote professional competency, service coordination, utilization of resources and the best practices related to the management and administration of abandoned infants assistance programs;

"(D) develop a national network of professionals in the field to serve as consultants and to link such individuals with persons and agencies requiring assistance; and

"(E) identify emerging issues with respect to child welfare, developmental disabilities and maternal and child health, particularly as such issues relate to pre- and post-natal alcohol, drug and pediatric HIV exposure.

"(3) Among the groups to be given priority for these services under this provision are those who are drug or alcohol addicted, individuals with acquired immune deficiency syndrome, minorities, limited English proficient individuals, or those individuals who have been statistically and historically underserved by such information services and dissemination. Information on prevention and services shall also be distributed to the communities of such individuals.

"(4) The Secretary shall enter into contracts or cooperative services under this subsection for periods of not less than 3 years. The Secretary shall extend the contract or grant for 2 additional consecutive 1-year periods absent a finding by the Secretary of substantial nonperformance.";

(3) in paragraph (1)(A) of subsection (c) (as so redesignated), by inserting after "infants who have acquired immune deficiency syndrome", the following: "or those who are pre- or post-natally exposed to the etiologic agent for the human immunodeficiency virus, drugs or alcohol, or who are medically fragile,"; and

(4) in paragraph (2) of subsection (d) (as so redesignated), by striking "April 1, 1991" and inserting "April 1, 1992".

SEC. 5. DEFINITIONS.

Section 103 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by striking "sec." and all that follows through "the term" and inserting the following:

"SEC. 103. DEFINITIONS.

"For purposes of this title:

"(1) The term"; and

(2) by adding at the end the following new paragraphs:

"(2) The term 'natural family' shall be interpreted to include natural parents, grandparents, familial members (including all siblings and children resident in the household), and others (on a continuing basis) who reside in the household and are in a care-giving situation with respect to infants and young children covered under this Act.

"(3) The term 'medically fragile' includes those infants and young children who exhibit medical, physical or developmental conditions occasioned by pre- or post-natal alcohol and drug exposure.".

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

Section 104 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended by striking "For the purpose" and all that follows and inserting the following:

"(a) DEMONSTRATION GRANTS IN GENERAL.—For the purpose of making grants under section 101(a), there are authorized to be appropriated $15,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(b) COMPREHENSIVE SERVICE CENTERS.—For the purpose of making grants under section 101(b), there are authorized to be appropriated $1,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(c) EVALUATIONS OF DEMONSTRATION PROJECTS.—For the purpose of making grants under section 102(a), there are authorized to be appropriated $1,500,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(d) SPECIAL NEEDS DISSEMINATION.—For the purpose of making grants under section 102(b), there are authorized to be appropriated $5,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

"(e) ADMINISTRATIVE EXPENSES.—

"(1) In addition to the funds authorized above, there shall be an amount authorized for the purpose of administering this program of 5 percent of the amount appropriated for the programs in fiscal years 1992, 1993, 1994, and 1995.

"(2) The Secretary may not obligate any of the amounts appropriated under paragraph (1) for a fiscal year unless, from the aggregate amounts appropriated under subsections (a) through (d) for the fiscal year, the Secretary has obligated for the purpose described in paragraph (1) an amount equal to the amounts obligated by the Secretary for such purpose in fiscal year 1991.

"(f) AVAILABILITY OF FUNDS.—Funds appropriated under this authority shall remain available until expended.".

SEC. 7. CONFORMING AMENDMENT.

The heading for title I of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended by adding at the end the following: "AND ABANDONMENT PREVENTION PROGRAMS".

SEC. 8. TERMINATION OF PROGRAM.

Section 105 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is repealed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE 900 SERVICES CONSUMER PROTECTION ACT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to consideration of Calendar 275, S. 1579, the 900 Service Consumer Protection Act of 1991.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1579) to provide for regulation and oversight of the development and application of the telephone technology known as pay per call, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 1579

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "900 Services Consumer Protection Act of 1991".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The pay-per-call telecommunications industry has grown into a national, billion-

dollar industry as a result of recent technological innovations.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) Some interstate pay-per-call businesses, however, are engaging in practices which are misleading to the consumer, harmful to the public interest, and/or contrary to accepted standards of business [practice.] *practices.*

(4) The improper activities of those businesses damage the reputation of the entire pay-per-call industry, causing harm to the many reputable businesses that are serving the public in an honest and honorable fashion.

(5) Many of the harmful practices of the pay-per-call industry are currently beyond the reach of regulatory agencies and existing legislation.

(6) The nationwide, interstate scope of pay-per-call services makes it impossible for the individual States to regulate these businesses within their individual borders.

(7) Therefore, Congress should enact legislation that provides for the proper and orderly regulation of the pay-per-call industry in order to protect the public interest and allow for the continued growth of pay-per-call businesses.

SEC. 3. PURPOSE.

It is the purpose of this Act—

(1) to put into effect a system of regulation and review of the pay-per-call business; and

(2) to give the Federal Communications Commission and the Federal Trade Commission authority to prescribe regulations, adopt enforcement procedures, and conduct oversight concerning the pay-per-call industry, to give State attorneys general authority to enforce Federal laws and regulations concerning that industry, to afford reasonable protection to consumers, and to assure that violations of Federal law do not occur.

SEC. 4. DEFINITIONS.

As used in this Act—

(1) The term "pay-per-call service" means any information service, provided by telephone, which receives payment, directly or indirectly, from each person who calls that service by telephone. The Federal Communications Commission shall, by regulation, specify in greater detail the kinds of information services that are included within such term.

(2) The term "common carrier" has the meaning given that term under section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)).

(3) The term "information service" does not include any regulated communication service provided by a common carrier.

(4) The term "provider of a pay-per-call service" does not include a common carrier when its sole action with respect to a pay-per-call service is—

(A) to carry such service over its network; or

(B) to bill and collect for such service.

(5) The term "caller" means a person using a pay-per-call service.

(6) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

SEC. 5. FCC AND FTC REGULATIONS ON PAY-PER-CALL SERVICES.

(a) RULEMAKING PROCEEDINGS.—The Federal Communications Commission and Federal Trade Commission shall, within 120 days after the date of enactment of this Act, initiate coordinated rulemaking proceedings to establish a consistent system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this Act, and other applicable Federal statutes and regulations. The final rules or regulations issued pursuant to such proceedings shall be effective within 1 year after the date of enactment of this Act.

(b) MINIMUM STANDARDS FOR PAY-PER-CALL SERVICES.—The rules or regulations issued by the Federal Trade Commission under subsection (a) shall require that a pay-per-call service—

(1) shall include an introductory disclosure message that describes the service being provided and the maximum charge per minute or per call and other charges, and informs the caller that charges for the call will begin at the end of the introductory message;

(2) shall enable the caller to hang up before the end of the introductory message without incurring any charge whatsoever;

(3) shall, after the institution of any increase in charges for the service, disable any bypass mechanism which allows repeat callers to avoid listening to the complete introductory disclosure message required under paragraph (1), for a period of time sufficient to give such repeat callers adequate and sufficient notice of the increase;

(4) shall not be aimed at children under the age of 12, unless such service is a bona fide educational service; and

(5) shall prohibit the use of a toll-free telephone number from which a caller will be automatically connected to an access number for a pay-per-call service.

(c) COMMON CARRIER OBLIGATIONS.—The rules or regulations issued by the Federal Communications Commission under subsection (a) shall include the following requirements for common carriers:

(1) A common carrier which contracts with a provider of a pay-per-call service shall make readily available on request—

(A) a list of the access numbers for each of the pay-per-call services it carries;

(B) a short description of each such service;

(C) a statement of the maximum charges per call or per minute, and any other charge, for each such service;

(D) a statement of its name, business address, and business telephone; and

(E) such other information as the Federal Communications Commission considers necessary for the enforcement of this Act and other applicable Federal statutes and regulations.

(2) A common carrier shall not disconnect a subscriber's local exchange telephone service, or long distance telephone service, because of nonpayment of charges for any pay-per-call service.

(3) A common carrier that provides local exchange service shall—

(A) offer telephone subscribers (where technically and economically feasible) the option of blocking access from their telephone number to all, or to certain specific, [prefixes,] *prefixes* used by pay-per-call services, which option—

(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the rules or regulations under subsection (a), and (II) to any subscriber who subscribes to a new telephone number prior to and for a period of 60 days after the time the new telephone number is effective; and

(ii) shall otherwise be offered at a reasonable fee as established by the appropriate State regulatory commission; and

(B) offer telephone subscribers (where the Federal Communications Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

(4) A common carrier that engages in billing and collection of charges for pay-per-call services shall—

(A) give telephone subscribers the option of cancelling charges for pay-per-call services in instances of unauthorized use or misunderstanding of such charges at the time of use, subject to guidelines prescribed by the Federal Communications Commission to prevent subscribers from abusing that option;

(B) send, to every person subscribing to a new telephone number and, within 60 days after the issuance of such rules or regulations, to all telephone subscribers, and at least annually thereafter, a disclosure statement that—

(i) sets forth all rights and obligations held by the subscriber and the carrier with respect to the use and payment for pay-per-call services; and

(ii) describes the applicable blocking options required under paragraph (3) (A) and (B);

(C) in any billing to telephone subscribers that includes charges for any pay-per-call service, display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges; and for each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and duration of the call;

(D) in instances when such carriers contract for the collection and distribution of charges by any provider of pay-per-call services that solicits charitable contributions, shall obtain from that provider proof of the tax exempt status of any person or organization for which contributions are solicited;

(E) have the right to recover such carrier's costs of complying with subparagraphs (A), (B), and (C) from the provider of pay-per-call services for which such carrier conducts billing and collection;

(F) stop the assessment of time-based charges upon disconnection by the caller; and

(G) require that pay-per-call services be offered only via the use of certain telephone number prefixes.

(d) ADVERTISING RESTRICTIONS.—The rules or regulations issued by the Federal Trade Commission under subsection (a) shall—

(1) require that any provider of a pay-per-call service shall include, in any advertisement for a pay-per-call service a disclosure stating the maximum charge per call or per minute for calling the advertised number and such other information as the Federal Trade Commission shall consider necessary;

(2) require that, whenever the number to be called is shown in television and print media advertisements, the provider of a pay-per-call service shall ensure that the charges for the call are clear and conspicuous and displayed for the same duration as that number is displayed;

(3) prohibit any person from advertising on any radio station, television broadcast station, or community antenna television station by means of an advertisement that emits electronic tones which can automatically dial an access number for a pay-per-call service;

(4) require that any telephone message soliciting calls to a pay-per-call service specify clearly, and at the audible volume of the solicitation, the maximum charge per call or

per minute and other charges for such a call; and

(5) prohibit any person from advertising a toll-free telephone number from which a caller can or will be automatically connected to an access number for a pay-per-call service.

(e) MATTERS FOR FCC AND FTC CONSIDERATION.—(1) In conducting a proceeding under subsection (a), the Federal Communications shall consider requiring by rule or regulation that—

(A) a pay-per-call service—

(i) automatically disconnect a call after one full cycle of program; and/or

(ii) automatically disconnect interactive programs if no activity occurs within a reasonable, specified time period; and

(B)(i) a pay-per-call service providing a live interactive group program shall include a beep tone or other appropriate and clear signal during the program so that callers will be alerted to the passage of time; and

(ii) such tone or other signal shall be explained in the disclosure statement required under subsection (c)(4)(B).

(2) In conducting a proceeding under subsection (a), the Federal Trade Commission shall consider requiring by rule or regulation that—

(A) a pay-per-call service to which a person presubscribes shall be exempt from the requirements of subsection (b); and

(B) a pay-per-call service for which there is a nominal per-call charge shall be exempt from the requirements of subsection (b).

(f) EFFECT ON DIAL-A-PORN PROHIBITIONS.—Nothing in this section shall affect the provisions of section 223 of the Communications Act of 1934 (47 U.S.C. 223).

SEC. 6. FEDERAL AGENCY ENFORCEMENT.

(a) FEDERAL COMMUNICATIONS COMMISSION.—Any violation of the regulations issued by the Federal Communications Commission under section 5 of this Act shall be treated as a violation of the rules and regulations under the Communications Act of 1934 and therefore shall be subject to the provisions of title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.), including—

(1) criminal penalties for willful and knowing violation of Commission rules, regulations, conditions, and restrictions, consisting of a fine of not to exceed $500 for each day in which an offense occurs; and

(2) forfeiture penalties for the willful or repeated failure to comply with statutory provisions or Commission rules, regulations, or orders—

(A) of not to exceed $100,000 for each violation or each day of a continuing violation by a common carrier subject to title II of the Communications Act of 1934, or by an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission; and

(B) of not to exceed $10,000 for each violation or each day of a continuing violation by a person that is not such a common carrier or applicant.

(b) FEDERAL TRADE COMMISSION.—Any violation of any rule prescribed by the Federal Trade Commission under section 5 of this Act shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices and therefore shall be subject to any remedy or penalty applicable to any violation thereof. The Federal Trade Commission shall prevent any person from violating a rule, regulation, or order of the Federal Trade Commission under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such a rule, regulation, or order shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

SEC. 7. ACTIONS BY STATE ATTORNEYS GENERAL.

(a) AUTHORITY OF ATTORNEYS GENERAL.—Whenever the attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any provider of a pay-per-call service has engaged or is engaged in acts which violate any rule or regulation of the Federal Trade Commission under this Act, the State may bring a civil action on behalf of its residents to enjoin such acts, to enforce compliance with any rule or regulation of the Federal Trade Commission under this Act, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this section against a provider of a pay-per-call service to enforce any liability or duty created by any rule or regulation of the Federal Trade Commission under this Act, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of any rule or regulation of the Federal Trade Commission under this Act, including the requirement that the defendant take such action as is necessary to remove the danger of violation of any such rule or regulation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(c) FTC RIGHTS.—The State shall serve prior written notice of any such civil action upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission shall have the right (1) to intervene in the action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(d) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(e) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(f) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(g) LIMITATION.—Whenever the Federal Trade Commission has instituted a civil action for violation of any rule or regulation under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(h) DEFINITION.—As used in this section, the term "attorney general" means the chief legal officer of a State.

SEC. 8. STUDY OF THE USE OF CALLERS' TELEPHONE NUMBERS.

(a) STUDY.—The Federal Trade Commission shall conduct a study of the acquisition and use, by providers of pay-per-call services, of callers' telephone numbers to generate, compile, and sell or lease lists of such numbers. Such study shall investigate the extent to which such numbers are obtained with or without the knowledge or consent of the caller and shall identify methods by which callers could be given the opportunity to grant or withhold that consent.

(b) REPORT.—The Federal Trade Commission shall, within 1 year after the date of enactment of this Act, submit to the Congress and the Commission a report on the results of the study required by subsection (a). To the extent that the study identifies any abuses in the acquisition and use, by providers of pay-per-call services, of callers' telephone numbers, such report shall include recommendations for administrative or legislative changes to prevent such abuses.

Mr. INOUYE. Mr. President, I rise today in support of the 900 Services Consumer Protection Act of 1991, legislation designed to address problems that have arisen due to the use of pay-per-call services, better known as 900 numbers. I am deeply grateful to Senator MCCAIN for all of his work on this compromise. I also want to thank all of the members of the Commerce Committee, and the cosponsors, particularly the chairman, Senator HOLLINGS, and the ranking member, Senator DANFORTH. Finally, I want to thank the Federal Communications Commission, the Federal Trade Commission, the telephone companies, and the 900 services industry, all of whom have worked with us to reach this compromise.

Let me take a few minutes to describe the industry and the problems that this bill is intended to address. Pay-per-call services give callers access to a variety of information services through the telephone network. Customers can obtain access to this information by calling a 10-digit number whose prefix is typically 900 or 700. When consumers call one of these numbers, they are then assessed a charge in addition to the regular long-distance charge. Generally, callers are charged either a flat fee per call or by the minute. The charge appears on the

caller's telephone bill and can be as high as $25 per call or $10 per minute.

These numbers are used to: Provide information like stock quotes and sports data; conduct polls—call one number for yes and another number for no; provide legal and other advice; provide mass announcements which play prerecorded messages; promote sweepstakes; sell goods; raise funds for charitable and political organizations; provide dating services and group access bridging—gab lines or party lines.

The way most 900 services operate is that the information service provider enters into a contract with a telephone company, most often long distance companies. The telephone company makes telephone lines available to the information service provider and also handles the billing and collection. The 900 service provider offers the information, such as stock quotes. The service provider then advertises the service and the 900 number using print and/or broadcast media. When a consumer calls the stock quote 900 number, he or she is then billed directly on his or her telephone bill. The telephone company collects the charge for the consumer, takes out its share to cover the cost of providing the lines and the billing service, and passes the remainder of the charge to the service provider. It is important to note that the telephone company does not provide the information; the telephone company provides the telephone lines and billing, but, generally does not provide the information content.

The 900 pay-per-call business, which began in the early 1980's, has developed into a $759 million industry and is projected to grow into a $1.6 billion industry by 1992. Testimony presented at a Communications Subcommittee hearing on this issue estimated that there are presently 14,000 different pay-per-call programs available.

In recent years, the increased usage of 900 numbers has resulted in many consumer complaints. Since January 1988 the FCC has received over 2,000 complaints, and the complaints are continuing. The FCC received 197 complaints in November 1990, and 190 in January 1991. The most frequent complaints concern false or deceptive disclosure of rates and products. Advertisements often fail to disclose the cost of calls to 900 numbers, or the cost of the call is printed in small illegible mice print. Some ads only state the cost of the call once, or in slurred, last-minute voiceovers, but repeat the 900 numbers frequently throughout the advertisement.

Some of these services target children who do not appreciate the costs of dialing these numbers. Especially dangerous are those that run TV and radio advertisements telling children to hold the phone up to the TV or radio. The tones associated with each telephone number are then broadcast over the TV or radio so that the call is dialed automatically. As a result, children do not even have to know how to dial to be connected to one of these services.

Finally, this problem is exacerbated by the fact that these charges are collected through the monthly telephone bill. This not only lends legitimacy to the charge, because it looks like the telephone company is responsible for the charge, but the consumer believes that he or she must pay the charge or the telephone company will disconnect their service.

These problems have not gone unnoticed. Some telephone companies have voluntarily begun to institute measures to provide some protections to consumers. For example, GTE Hawaiian Telephone Co. has made call blocking of 900 and 700 numbers available to all of its customers. The blocking service is free the first time it is requested by a customer. If the customer cancels the service and then reinstates it, there will be a charge. However, this only addresses part of the problem and this service is not universally available.

To address these problems, the 900 Services Consumer Protection Act of 1991 expands the jurisdiction of the FCC, FTC, and the States to provide express authority to address the problems raised by the explosive growth of the pay-per-call industry. The major provisions do the following:

Require that 900 services provide a preamble stating the cost of the call, all per-call charges, describing the information, product, or service to be provided, and giving the caller the option to hang up without being charged;

Ban 900 services aimed at children under the age of 12;

Require the phone companies to give their subscribers the option to block all calls to 900 numbers from their phone where technically and economically feasible;

Prohibit local telephone companies from disconnecting subscribers for failure to pay interstate 900 number charges;

Prohibit broadcasters from carrying advertisements that emit tones that automatically dial a telephone number when the phone is held up to the radio or television;

Require full and clear disclosure of the rates for these calls in all advertisements;

Prohibit the use of 800 numbers—free calls—that automatically connect callers to 900 numbers that charge the caller;

Require the telephone company who contracts with 900 service providers to make available on request the information concerning the 900 service providers it contracts with, including the name and address of the 900 service provider, the costs of the service, and any other information the FCC deems appropriate.

Give the FCC, the FTC, and the States the authority to enforce the provisions of this legislation.

Senator MCCAIN and I are offering an amendment to the bill, as reported. This amendment would exempt pay-per-call services to which consumers must presubscribe and protect telephone companies from liability for actions taken by information service providers. We believe that presubscription services should not be subject to the requirements of this bill because consumers must first enter into a contract with the information service provider before they can get access to these services. Thus, consumers clearly have the opportunity to decline to accept the services offered and have an opportunity to review the terms and conditions under which the service is offered before incurring any charges. Based on the record of the committee's hearing on this bill it is clear that presubscription services are not the types of services that have resulted in consumer complaints and therefore should be exempt.

As to the telephone companies, the amendment simply provides that telephone companies who provide transmission and/or billing services to 900 service providers will not be subject to liability if a 900 service provider violates the provisions of this bill. Thus, for example, a telephone company will not be subject to liability in the event that a 900 service provider fails to comply with the preamble requirement of this legislation. A telephone company would, however, be subject to liability if it violated a provision of this act that applied to that company, like disconnecting a subscribers' telephone service for failure to pay 900 charges. In other words, this amendment simply clarifies the fact that telephone companies are not to be held responsible for actions of unaffiliated information service providers.

In closing, I believe that this legislation is very important, and I urge all of my colleagues to support this effort. This bill has virtually no opposition. It ensures that consumers are protected against abuses by pay-per-call service providers, while permitting legitimate service providers to expand their business opportunities.

Mr. HOLLINGS. Mr. President, today the Senate will consider S. 1579, the 900 Telephone Services Consumer Protection Act of 1991. I commend Senators INOUYE and MCCAIN, the authors of this legislation, and my fellow cosponsors for all of their work on this measure. This bill represents a bipartisan effort, and it has taken much hard work to develop this compromise.

Mr. President, consumers are under attack. Everywhere they turn they are bombarded with advertisements for pay-per-call services—so called 900 services. A recent advertisement in a Washington area paper reads: "If you

want to be sure you are going to Heaven call 1-900-535-4900." The 900 services are used to promote anything and everything. Unfortunately, these advertisements often deceive customers as to the cost of these calls. The charges can be as high as $50 per call or $10 per minute. Further, when a consumer calls, the provider often fails to give the consumer what was advertised.

The South Carolina Department of Consumer Affairs has received more complaints about 900 services than any other issue except computerized phone calls—over 160 complaints concerning 900 numbers since July of this year. The 900 pay-per-call business is close to a billion-dollar-a-year industry which is expected to double within 2 years. The complaints seem to be growing faster than the industry.

These services prey upon people's hopes and dreams and add to their despair. At recent hearings in Greenville and Columbia, SC, I heard from my constituents, and there is no doubt in my mind that this legislation is needed. One woman received a call on a night while she was trying to figure out which bills she could afford to pay that month. The call promised that she would receive a VISA card if she called a 900 number. She was charged $50 for the call and got nothing, not even an application to complete.

Another constituent had 900 charges on his phone bill one month. When he called his local phone company to complain, he was told to call the long-distance carrier. While he was waiting for a response from the long-distance company, his phone was disconnected for failing to pay the 900 charges. This went on for several months, each time because of the same 900 charges that appeared on one bill. He finally gave up and decided to do without a phone. Then he lost his job, and now has no home phone to use in his job search.

S. 1579 will address these problems. Among other things, it will prohibit telephone companies from disconnecting basic phone service for failure to pay 900 charges, it will require that callers are informed about the charges they will incur and the service or product to be provided, and, most importantly, it will impose penalties on information service providers and telephone companies for failure to comply with the requirements of this legislation.

It is clear to me that we need to enact legislation to provide consumers with information and additional protection against fraud and abuses perpetrated by certain unprincipled 900 service providers. As with most industries, many 900 service providers are operated by responsible individuals who do not take advantage of consumers. However, there are clearly those who abuse consumers. Even the 900 service providers realize that this is an issue Congress needs to address and have worked with the committee on this legislation.

In closing, I believe that we cannot assume a hands-off attitude while consumers are being harmed. We must act to prevent further abuses from 900 services, and I urge my colleagues to support this legislation.

Mr. MCCAIN. Mr. President, I am pleased that the Senate has agreed upon this legislation, S. 1579, the 900 Services Consumer Protection Act of 1991. This bill represents a comprehensive effort by Senator INOUYE and me to address the consumer abuses in the pay-per-call industry.

I would like to commend my good friend from Hawaii, the chairman of the Subcommittee on Communications, Senator INOUYE, for his diligence and leadership. His conviction to reach an equitable solution to the problems facing consumers and the communications industry is once again evident in the manner in which he worked on this legislation. I am grateful to him for his effort.

On February 21, 1991 of this year, I introduced S. 471, the 900 Services Consumer Protection Act of 1991 because of the flagrant abuses against consumers perpetrated by some information services providers, more commonly referred to as 900 service providers or pay-per-call services. Senator INOUYE later introduced S. 1166, the Telephone Consumer Assistance Act, on April 25, 1991. S. 1166 also sought to address the issue of consumer fraud in the 900 services industry.

S. 471 and S. 1166 were merged following a hearing on the two bills on July 16, 1991. S. 1579, the 900 Services Consumer Protection Act of 1991 is the result of this collaboration.

Of the many mechanisms commonly used to defraud consumers, nondisclosure and misinformation unfortunately stand as the most prevalent. Many of the services offered through the pay-per-call industry have shown this to be true time and time again.

Pay-per-call fraud is committed in a variety of ways. For example, advertisements of these services often do not disclose the full price of the call, or fail to state the price in a manner which is clear to the consumer. Thus, consumers are not always aware of the cost of the call, and are unprepared for the charge on the phone bill.

In addition, there have been complaints to both the Federal Communications Commission [FCC] and the Federal Trade Commission [FTC] about toll free 800 calls which reach a recording which directs the caller to dial a 900 number, without disclosure of the fact that there will be a charge or the amount that will be charged.

There is also great concern about the fact that the identity of the information provider is not available on the phone bill where the charge appears. The charge is attributed to the long-distance carrier. Therefore, the consumer cannot verify whether they did, indeed, call that service. This creates a burden for both the consumer and the long-distance carrier.

This has become an increasingly important issue for parents of young children. Children are the most common victims of consumer fraud in this industry. Minors are not in a position where they can make an informed decision about whether or not they should incur the cost of 900 services. This has been recognized by Federal policymakers in the area of communications since as far back as the 1960's. For this reason, the FCC has placed restrictions on certain kinds of television advertisements aimed at children. Because of the limits placed on children by youth and inexperience, they cannot distinguish between actual programming and the purpose of advertisements. This necessitates the consideration of children as a protected consumer class.

So-called latchkey kids are particularly susceptible to the temptation of making a 900 call as a result of watching a commercial, since they cannot ask their parents for permission or guidance because their parents are away at work.

It is clear that children are generally susceptible to the temptation of phoning in for services, and many of these services do not deliver what they promise. One such example is the Santa Claus line which promised a conversation with Santa. During the Christmas holidays, this is particularly enticing to young children. However, upon calling one particular Santa line, the child was informed that Santa was in the restroom, and that the child should call back in 10 minutes.

Regardless of whether or not the call was authorized by an adult, the child did not receive the service he or she was promised. If the child is still interested enough in contacting Santa Claus, he will continue to call in the hopes of speaking to him.

Another notorious case involving children is that of a different Santa Claus advertisement which directed children to put the phone up to the television set and delivered a series of tones which automatically dialed the phone number for the service. Clearly, the advertisement was aimed at very young children who may have difficulty dialing the telephone. If a child is too young to dial a telephone, then that child is obviously too young to make an informed consumer decision.

In the case of unmonitored 900 services usage, this unmonitored time often results in costly phone bills, up into the hundreds of dollars per month, because children were enticed to place a call by advertisement aimed directly at them, the innocent consumer.

These are not merely isolated incidents. Since 1988, the FCC has received

over 2,000 complaints. The number of complaints has increased each year.

This led the National Association of Attorneys General to issue a report in March 1991 on the state of the 900 industry. The report concluded that consumer abuses required Federal regulation of the industry. It particularly stressed the importance of protecting children, and recommended a ban on services aimed at children.

I believe that all consumers have a right to all of the information they need to make an informed decision about the service for which they will be charged. This legislation facilitates the exercise of that right by:

First, requiring that 900 services provide a preamble stating the cost of the call, all per-call charges, and the type of service the caller will receive for the fee;

Second, requiring the local phone companies to give each subscriber the option to block all calls to 900/700 numbers from each phone;

Third, prohibiting local telephone companies from disconnecting a subscriber's telephone service for failure to pay interstate 900 number charges;

Fourth, prohibiting the broadcast of automatic dial tones in radio and television advertisements and ban 900 services aimed at children under 12 years of age;

Fifth, requiring that telephone companies include in any bills sent to subscribers information describing the rates charged for 900/700 numbers, the type of services called, and the rights and obligations of callers and the carrier;

Sixth, requiring full and clear disclosure of the rates for these calls in all advertisements;

Seventh, prohibiting use of 800 numbers, or toll-free calls, that automatically connect a consumer to 900/700 numbers for which the caller is ultimately charged;

Eight, requiring all telephone carriers that contract with 900 service providers to make available on request the name, business address, and phone number of 900 service providers carried by that carrier, a short description of the 900 service provided, the access numbers for the 900 services, and the maximum charges for the 900 service;

Ninth, giving the FCC, the FTC, and the States the authority to enforce the provisions of this legislation;

Tenth, requiring the FTC to conduct a study concerning use of callers numbers, without their knowledge, by telemarketing services; and

Eleventh, requiring the FCC to conduct a study into the need for regulations requiring automatic disconnection of services after one full cycle, or of interactive programs if there is no activity for some period of time; and the need for beep tones to remind callers that they are being charged for interactive calls.

Mr. President, it is my hope that consumers will be able to use information services without concern that they will become victims of fraud. This industry has afforded consumers a broad array of services, giving them the convenience of receiving services and entertainment through an interactive system. Consumers have benefited from the growth of this industry, which is largely comprised of honest, legitimate 900 service providers.

I believe that this industry will continue to grow, and will benefit from this greater consumer awareness.

AMENDMENT NO. 1289

(Purpose: To amend the definition of the term "pay-per-call service", and for other purposes)

Mr. FORD. Mr. President, I send an amendment to the desk for Mr. INOUYE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. INOUYE, proposes an amendment numbered 1289.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all on page 4, lines 1 through 7, and insert in lieu thereof the following:

(1) The term "pay-per-call service" means any information service, provided by telephone, which receives payment, directly or indirectly, from each person who calls that service by telephone, except that such term shall not include information services for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service. The Federal Communications Commission shall, by regulation, specify in greater detail the kinds of information services that are included within such term and the criteria for determining whether a valid presubscription or comparable arrangement is created, consistent with the purposes of this Act.

Strike all on page 12, lines 12 through 20, and insert in lieu thereof the following:

(2) In conducting a proceeding under subsection (a), the Federal Trade Commission shall consider requiring by rule or regulation that a pay-per-call service for which there is a nominal per-call charge shall be exempt from the requirements of subsection (b).

At the end of page 12, add the following new subsection:

(g) APPLICABILITY OF PENALTIES TO COMMON CARRIERS.—No common carrier shall be liable for a criminal or civil sanction or penalty under this Act solely because it provided transmission or billing and collection services for a pay-per-call service that violated a rule or regulation issued or prescribed under this Act.

On page 15, line 12, strike "their" and insert in lieu thereof "its".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1289) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1579), as amended, was passed as follows:

S. 1579

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "900 Services Consumer Protection Act of 1991".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The pay-per-call telecommunications industry has grown into a national, billion-dollar industry as a result of recent technological innovations.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) Some interstate pay-per-call businesses, however, are engaging in practices which are misleading to the consumer, harmful to the public interest, and/or contrary to accepted standards of business practices.

(4) The improper activities of those businesses damage the reputation of the entire pay-per-call industry, causing harm to the many reputable businesses that are serving the public in an honest and honorable fashion.

(5) Many of the harmful practices of the pay-per-call industry are currently beyond the reach of regulatory agencies and existing legislation.

(6) The nationwide, interstate scope of pay-per-call services makes it impossible for the individual States to regulate these businesses within their individual borders.

(7) Therefore, Congress should enact legislation that provides for the proper and orderly regulation of the pay-per-call industry in order to protect the public interest and allow for the continued growth of pay-per-call businesses.

SEC. 3. PURPOSE.

It is the purpose of this Act—

(1) to put into effect a system of regulation and review of the pay-per-call business; and

(2) to give the Federal Communications Commission and the Federal Trade Commission authority to prescribe regulations, adopt enforcement procedures, and conduct oversight concerning the pay-per-call industry, to give State attorneys general authority to enforce Federal laws and regulations concerning that industry, to afford reasonable protection to consumers, and to assure that violations of Federal law do not occur.

SEC. 4. DEFINITIONS.

As used in this Act—

(1) The term "pay-per-call service" means any information service, provided by telephone, which receives payment, directly or indirectly, from each person who calls that service by telephone, except that such term shall not include information services for which users are assessed charges only after entering into a presubscription or com-

parable arrangement with the provider of such service. The Federal Communications Commission shall, by regulation, specify in greater detail the kinds of information services that are included within such term and the criteria for determining whether a valid presubscription or comparable arrangement is created, consistent with the purposes of this Act.

(2) The term "common carrier" has the meaning given that term under section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)).

(3) The term "information service" does not include any regulated communication service provided by a common carrier.

(4) The term "provider of a pay-per-call service" does not include a common carrier when its sole action with respect to a pay-per-call service is—

(A) to carry such service over its network; or

(B) to bill and collect for such service.

(5) The term "caller" means a person using a pay-per-call service.

(6) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

SEC. 5. FCC AND FTC REGULATIONS ON PAY-PER-CALL SERVICES.

(a) RULEMAKING PROCEEDINGS.—The Federal Communications Commission and Federal Trade Commission shall, within 120 days after the date of enactment of this Act, initiate coordinated rulemaking proceedings to establish a consistent system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this Act, and other applicable Federal statutes and regulations. The final rules or regulations issued pursuant to such proceedings shall be effective within 1 year after the date of enactment of this Act.

(b) MINIMUM STANDARDS FOR PAY-PER-CALL SERVICES.—The rules or regulations issued by the Federal Trade Commission under subsection (a) shall require that a pay-per-call service—

(1) shall include an introductory disclosure message that describes the service being provided and the maximum charge per minute or per call and other charges, and informs the caller that charges for the call will begin at the end of the introductory message;

(2) shall enable the caller to hang up before the end of the introductory message without incurring any charge whatsoever;

(3) shall, after the institution of any increase in charges for the service, disable any bypass mechanism which allows repeat callers to avoid listening to the complete introductory disclosure message required under paragraph (1), for a period of time sufficient to give such repeat callers adequate and sufficient notice of the increase;

(4) shall not be aimed at children under the age of 12, unless such service is a bona fide educational service; and

(5) shall prohibit the use of a toll-free telephone number from which a caller will be automatically connected to an access number for a pay-per-call service.

(c) COMMON CARRIER OBLIGATIONS.—The rules or regulations issued by the Federal Communications Commission under subsection (a) shall include the following requirements for common carriers:

(1) A common carrier which contracts with a provider of a pay-per-call service shall make readily available on request—

(A) a list of the access numbers for each of the pay-per-call services it carries;

(B) a short description of each such service;

(C) a statement of the maximum charges per call or per minute, and any other charge, for each such service;

(D) a statement of its name, business address, and business telephone; and

(E) such other information as the Federal Communications Commission considers necessary for the enforcement of this Act and other applicable Federal statutes and regulations.

(2) A common carrier shall not disconnect a subscriber's local exchange telephone service, or long distance telephone service, because of nonpayment of charges for any pay-per-call service.

(3) A common carrier that provides local exchange service shall—

(A) offer telephone subscribers (where technically and economically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes used by pay-per-call services, which option—

(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the rules or regulations under subsection (a), and (II) to any subscriber who subscribes to a new telephone number prior to and for a period of 60 days after the time the new telephone number is effective; and

(ii) shall otherwise be offered at a reasonable fee as established by the appropriate State regulatory commission; and

(B) offer telephone subscribers (where the Federal Communications Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

(4) A common carrier that engages in billing and collection of charges for pay-per-call services shall—

(A) give telephone subscribers the option of cancelling charges for pay-per-call services in instances of unauthorized use or misunderstanding of such charges at the time of use, subject to guidelines prescribed by the Federal Communications Commission to prevent subscribers from abusing that option;

(B) send, to every person subscribing to a new telephone number and, within 60 days after the issuance of such rules or regulations, to all telephone subscribers, and at least annually thereafter, a disclosure statement that—

(i) sets forth all rights and obligations held by the subscriber and the carrier with respect to the use and payment for pay-per-call services; and

(ii) describes the applicable blocking options required under paragraph (3) (A) and (B);

(C) in any billing to telephone subscribers that includes charges for any pay-per-call service, display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges; and for each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and duration of the call;

(D) in instances when such carriers contract for the collection and distribution of charges by any provider of pay-per-call services that solicits charitable contributions, shall obtain from that provider proof of the tax exempt status of any person or organization for which contributions are solicited;

(E) have the right to recover such carrier's costs of complying with subparagraphs (A), (B), and (C) from the provider of pay-per-call services for which such carrier conducts billing and collection;

(F) stop the assessment of time-based charges upon disconnection by the caller; and

(G) require that pay-per-call services be offered only via the use of certain telephone number prefixes.

(d) ADVERTISING RESTRICTIONS.—The rules or regulations issued by the Federal Trade Commission under subsection (a) shall—

(1) require that any provider of a pay-per-call service shall include, in any advertisement for a pay-per-call service a disclosure stating the maximum charge per call or per minute for calling the advertised number and such other information as the Federal Trade Commission shall consider necessary;

(2) require that, whenever the number to be called is shown in television and print media advertisements, the provider of a pay-per-call service shall ensure that the charges for the call are clear and conspicuous and displayed for the same duration as that number is displayed;

(3) prohibit any person from advertising on any radio station, television broadcast station, or community antenna television station by means of an advertisement that emits electronic tones which can automatically dial an access number for a pay-per-call service;

(4) require that any telephone message soliciting calls to a pay-per-call service specify clearly, and at the audible volume of the solicitation, the maximum charge per call or per minute and other charges for such a call; and

(5) prohibit any person from advertising a toll-free telephone number from which a caller can or will be automatically connected to an access number for a pay-per-call service.

(e) MATTERS FOR FCC AND FTC CONSIDERATION.—(1) In conducting a proceeding under subsection (a), the Federal Communications shall consider requiring by rule or regulation that—

(A) a pay-per-call service—

(i) automatically disconnect a call after one full cycle of program; and/or

(ii) automatically disconnect interactive programs if no activity occurs within a reasonable, specified time period; and

(B)(i) a pay-per-call service providing a live interactive group program shall include a beep tone or other appropriate and clear signal during the program so that callers will be alerted to the passage of time; and

(ii) such tone or other signal shall be explained in the disclosure statement required under subsection (c)(4)(B).

(2) In conducting a proceeding under subsection (a), the Federal Trade Commission shall consider requiring by rule or regulation that a pay-per-call service for which there is a nominal per-call charge shall be exempt from the requirements of subsection (b).

(f) EFFECT ON DIAL-A-PORN PROHIBITIONS.—Nothing in this section shall affect the provisions of section 223 of the Communications Act of 1934 (47 U.S.C. 223).

(g) APPLICABILITY OF PENALTIES TO COMMON CARRIERS.—No common carrier shall be liable for a criminal or civil sanction or penalty under this Act solely because it provided transmission or billing and collection services for a pay-per-call service that violated a rule or regulation issued or prescribed under this Act.

SEC. 6. FEDERAL AGENCY ENFORCEMENT.

(a) FEDERAL COMMUNICATIONS COMMISSION.—Any violation of the regulations issued by

the Federal Communications Commission under section 5 of this Act shall be treated as a violation of the rules and regulations under the Communications Act of 1934 and therefore shall be subject to the provisions of title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.), including—

(1) criminal penalties for willful and knowing violation of Commission rules, regulations, conditions, and restrictions, consisting of a fine of not to exceed $500 for each day in which an offense occurs; and

(2) forfeiture penalties for the willful or repeated failure to comply with statutory provisions or Commission rules, regulations, or orders—

(A) of not to exceed $100,000 for each violation or each day of a continuing violation by a common carrier subject to title II of the Communications Act of 1934, or by an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission; and

(B) of not to exceed $10,000 for each violation or each day of a continuing violation by a person that is not such a common carrier or applicant.

(b) FEDERAL TRADE COMMISSION.—Any violation of any rule prescribed by the Federal Trade Commission under section 5 of this Act shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices and therefore shall be subject to any remedy or penalty applicable to any violation thereof. The Federal Trade Commission shall prevent any person from violating a rule, regulation, or order of the Federal Trade Commission under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such a rule, regulation, or order shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

SEC. 7. ACTIONS BY STATE ATTORNEYS GENERAL.

(a) AUTHORITY OF ATTORNEYS GENERAL.—Whenever the attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any provider of a pay-per-call service has engaged or is engaged in acts which violate any rule or regulation of the Federal Trade Commission under this Act, the State may bring a civil action on behalf of its residents to enjoin such acts, to enforce compliance with any rule or regulation of the Federal Trade Commission under this Act, to obtain damages on behalf of its residents, or to obtain such further and other relief as the court may deem appropriate.

(b) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this section against a provider of a pay-per-call service to enforce any liability or duty created by any rule or regulation of the Federal Trade Commission under this Act, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of any rule or regulation of the Federal Trade Commission under this Act, including the requirement that the defendant take such action as is necessary to remove the danger of violation of any such rule or regulation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(c) FTC RIGHTS.—The State shall serve prior written notice of any such civil action upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission shall have the right (1) to intervene in the action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(d) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(e) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(f) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(g) LIMITATION.—Whenever the Federal Trade Commission has instituted a civil action for violation of any rule or regulation under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(h) DEFINITION.—As used in this section, the term "attorney general" means the chief legal officer of a State.

SEC. 8. STUDY OF THE USE OF CALLERS' TELEPHONE NUMBERS.

(a) STUDY.—The Federal Trade Commission shall conduct a study of the acquisition and use, by providers of pay-per-call services, of callers' telephone numbers to generate, compile, and sell or lease lists of such numbers. Such study shall investigate the extent to which such numbers are obtained with or without the knowledge or consent of the caller and shall identify methods by which callers could be given the opportunity to grant or withhold that consent.

(b) REPORT.—The Federal Trade Commission shall, within 1 year after the date of enactment of this Act, submit to the Congress and the Commission a report on the results of the study required by subsection (a). To the extent that the study identifies any abuses in the acquisition and use, by providers of pay-per-call services, of callers' telephone numbers, such report shall include recommendations for administrative or legislative changes to prevent such abuses.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE HIGHWAY BILL

Mr. SIMPSON. Mr. President, I just will take a few monents. I have spoken with the Senator from Illinois [Mr. DIXON]. He spoke, expressing his frustration with certain obstructionist tactics in the appointment of conferees on the highway bill.

I just want to set the record straight there. I am a member of the committee with primary jurisdiction over that bill and I, immediately after passage, expressed my desire to serve as conferee on the bill to my ranking member. When I then learned that I would not be appointed I discussed the matter with the full committee ranking member and the subcommittee ranking member, was satisfied then that my concerns would be addressed forcefully in conference with my colleagues. I withdrew any objection that I had to the motion to appoint conferees. That was nearly 24 hours ago.

Early this morning my intentions were communicated to the scheduling office. Since that time, I want the record clear: No Republican has had any opposition to be appointment of conferees on this very critically important bill, as the Senator from Illinois has indicated. I concur with him. Our side is quite eager to proceed with the conference. The truth of the matter is that my colleague and others are the authors of some of the problem because of the delayed appointment of conferees and the large number of people seeking to be conferees from the various committee.

So I understand that he, too, wished to be a conferee as a representative of the Banking Committee. That is his right. He pursued his request with the appropriate members of his party, and during his pursuit of that goal he has protected his rights fully in accordance with the rules and traditions of the Senate. Unfortunately, that is what is delaying the process where we appoint conferees.

I certainly do not blame the Senator from Illinois for his efforts, but he is stating a case which is not true in making comments about those of us on this side of the aisle with regard to any delay there. We do want to move forward. I think all of us do. We have no objections to the appointment of conferees to the highway bill on this side of the aisle.

I thank the Chair, and I thank my colleague from Kentucky.

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11:30 a.m., Wednesday, October 30; that following the prayer, the Journal of the proceedings be approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 12 noon, with Senators BOREN and LEVIN recognized to address the Senate for up to 10 minutes each; further, that at 12 noon, the Senate resume consideration of S. 1745.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 11:30 A.M.

Mr. FORD. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 11:43 p.m., recessed until Wednesday, October 30, 1991, at 11:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 29, 1991:

DEPARTMENT OF STATE

WILLIAM EDWIN RYERSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ALBANIA.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASSES INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

RICHARD M. BROWN, OF VIRGINIA
TERRENCE J. BROWN, OF VIRGINIA
JOHN P. COMPETELLO, OF FLORIDA
GEORGE T. EASTON, OF CALIFORNIA
KEITH W. SHERPER, OF VIRGINIA
AARON S. WILLIAMS, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE, AND FOR APPOINTMENT, AS CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE, AS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

KEITH E. BROWN, OF VIRGINIA
JOHN B. FLYNN, OF NEVADA
SONIA HAMMAM, OF THE DISTRICT OF COLUMBIA
HOWARD B. HELMAN, OF THE DISTRICT OF COLUMBIA
BARBARA CABALLERO KENNEDY, OF CALIFORNIA
LAURA K. MCGHEE, OF FLORIDA
VIVIKKA M. MOLLDREM, OF MARYLAND
LEE D. ROUSSEL, OF FLORIDA
CAROLE HENDERSON TYSON, OF MARYLAND
JAMES R. WASHINGTON, OF THE DISTRICT OF COLUMBIA
MARILYN ANNE ZAK, OF WASHINGTON

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR, AND CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

HOWARD R. HONG, OF TEXAS
MARJORIE A. LEWIS, OF MISSOURI
FRANK MILLER, OF NEW YORK
DOUGLAS L. SHELDON, OF VIRGINIA
WENDY A. STICKEL, OF VIRGINIA

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS 4, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

To be Foreign Service officers of class four

DAVID ALLAN ALARID, OF OKLAHOMA
REKHA VISVANATHAN ARNESS, OF VIRGINIA
FREDERIC S. BARON, OF ILLINOIS
DIANE REIMER BEAN, OF FLORIDA
DUANE CLEMENS BUTCHER, OF CALIFORNIA
ALAN JOHNSTONE CARLSON, OF MINNESOTA
JOHN ALAN CONNERLEY, OF CALIFORNIA
JOEL DANIES, OF THE DISTRICT OF COLUMBIA
ANN MICHELLE DENEY, OF LOUISIANA
ANGELA RENEE DICKEY, OF FLORIDA
CAMILLE MARTINE PISK DONOGHUE, OF TEXAS
RICHARD JAMES DRISCOLL, OF CALIFORNIA
FRANK JONATHAN FINVER, OF MARYLAND
MICHAEL J. FITZPATRICK, OF VIRGINIA
THOMAS BARRY GIBBONS, OF VIRGINIA
STEVEN BROOKSHIRE GROH, OF TEXAS
STEVEN KASHKETT, OF FLORIDA
CHRISTOPHER A. LAMBERT, OF VIRGINIA
THEODORE M. LIENHART, OF VIRGINIA
ALEXANDER MARTSCHENKO, OF NEW JERSEY
NANCY E. MCELDOWNEY, OF FLORIDA
RICHARD M. MILLS, JR., OF TEXAS
PHILLIP ANDREW MIN, OF NEW JERSEY
THOMAS DANIEL MITTNACHT, OF TEXAS
JEFFREY A. MOON, OF FLORIDA
MARTIN D. MURPHY, OF CALIFORNIA
TIMOTHY DALMAINE NEELY, OF ILLINOIS
DENNIS FREESTONE OLSEN, OF CALIFORNIA
KEVIN MICHAEL O'REILLY, OF ILLINOIS
ANTHONY A. PAHIGIAN, OF MASSACHUSETTS
FRANCISCO DANIEL SAINZ, OF NEW YORK
ERIC T. SCHULTZ, OF COLORADO
JEFFREY C. SCHWENK, OF ILLINOIS
STEPHEN DAVID SELLERS, OF CALIFORNIA
CHRISTOPHER SIBILLA, OF CALIFORNIA
KATHLEEN ANNE SMITH, OF FLORIDA
FRANK WILLIAM STANLEY, OF VIRGINIA
SCOTT D. THOMSON, OF SOUTH CAROLINA
JANICE LYNN TRICKEL, OF MONTANA
GARY S. WAKAHIRO, OF CALIFORNIA

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENTS OF STATE AND COMMERCE AND THE U.S. INFORMATION AGENCY TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICES OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

JAKE COSMOS ALLER, OF WASHINGTON
LISA GAIL ALLYN, OF WASHINGTON
STEPHEN O. ALMY, OF VIRGINIA
BARBARA L. ARMSTRONG, OF GEORGIA
LUIS EDMUNDO ARREAGA, OF CALIFORNIA
BAMA ATHREYA, OF NEW JERSEY
MARY MONICA BARNICLE, OF MICHIGAN
KEVIN M. BATH, OF VIRGINIA
RUSSELL ALTON BAUM, JR., OF CALIFORNIA
KEITH D. BENNETT, OF UTAH
RICHARD K. BIELER, OF VIRGINIA
JOHN J. BIRD, OF VIRGINIA
CHARLES KEVIN BLACKSTONE, OF NEW YORK
CHRISTOPHER SCOTT BODDE, OF VIRGINIA
JEREMY BECKLEY BRENNER, OF CONNECTICUT
RAVI S. CANDADAI, OF WASHINGTON
FRANK CARRICO, OF TEXAS
MARKHAM C. CHADWELL, OF VIRGINIA
GEORGE B. COLLINS, OF VIRGINIA
DAVID FRANCIS COWHIG, JR., OF VIRGINIA
KENNETH A. DAIGLER, OF THE DISTRICT OF COLUMBIA
KATHLEEN A. DELANEY, OF IOWA
JOSEPH DEMARIA, OF NEW JERSEY
BENJAMIN BEARDSLEY DILLE, OF IOWA
CHRISTINA DOUGHERTY, OF VIRGINIA
THOMAS M. DUFFY, OF CALIFORNIA
LIISA ECOLA, OF ILLINOIS
BARRY M. EISLER, OF VIRGINIA
OSCAR RIGOBERTO ESTRADA, OF CALIFORNIA
ODALYS C. FAJARDO, OF FLORIDA
KATHERINE E. FARRELL, OF INDIANA
NICOLAS A. FERRO, OF VIRGINIA
J. ANDREW FIGURA, OF THE DISTRICT OF COLUMBIA
ELIZABETH ANN FRITSCHLE, OF THE DISTRICT OF COLUMBIA
CAROL C. FUHRMAN, OF VIRGINIA
SHELLEY GALBRAITH, OF VIRGINIA
DONALD F. GALLAGHER, OF VIRGINIA
LAWRENCE GARRED, OF PENNSYLVANIA
JONATHAN DEAN GIULIANO, OF VIRGINIA
KIRA M. GLOVER, OF CALIFORNIA
GEEGEE C. GODFREY, OF VIRGINIA
PATRICIA D. GOODE, OF VIRGINIA
BRIAN A. GOOGINS, OF THE DISTRICT OF COLUMBIA
ELIZABETH PERRY GOURLAY, OF SOUTH CAROLINA
GREGORY MICHAEL GUERIN, OF TENNESSEE
MIRIAM E. GUICHARD, OF CALIFORNIA
PETER D. HAAS, OF VIRGINIA
ANDREW B. HAVILAND, OF IOWA
MARGARET DEIRDRE HAWTHORNE, OF THE DISTRICT OF COLUMBIA
CHARLES F. HEIDELBERG, OF IOWA
JAMES WILLIAM HERMAN, III, OF WASHINGTON
JACK HINDEN, OF CALIFORNIA
PAUL ALAN HOLLINGSWORTH, OF VIRGINIA
RICHARD A. HOLTZAPPLE, OF CALIFORNIA
MARILYN HULBERT, OF FLORIDA
SHELLEY S. JANNOTTA, OF MARYLAND
JOHN C. JESSEN, III, OF VIRGINIA
RICHARD M. KAMINSKI, OF NEVADA
ANNE KATSAS, OF THE DISTRICT OF COLUMBIA
JONATHAN STUART KESSLER, OF TEXAS
KEVIN A. KIERCE, OF VIRGINIA
KARIN MARGARET KING, OF OHIO
JOHN C. KMETZ, OF THE DISTRICT OF COLUMBIA
MICHAEL KOPLOVSKY, OF IOWA
MARNIX ROBERT ANDRE KOUMANS, OF MASSACHUSETTS
STEVEN HERBERT KRAFT, OF VIRGINIA
MARY ANNE KRUGER, OF THE DISTRICT OF COLUMBIA
AGOTA M. KUPERMAN, OF THE DISTRICT OF COLUMBIA
KAMALA SHIRIN LAKHDHIR, OF CONNECTICUT
JEFFREY D. LANCASTER, OF VIRGINIA
ANTHONY J. LAVALLAIS, OF MARYLAND
LISA LETENDRE, OF VIRGINIA
GREGORY D. LOOSE, OF CALIFORNIA
DONALD LU, OF CALIFORNIA
JAMES P. LYNCH, OF VIRGINIA
SOPHIA LYNN, OF THE DISTRICT OF COLUMBIA
PAMELA J. MANSFIELD, OF ILLINOIS
DUBRAVKA ANA MARIC, OF CONNECTICUT
WILLIAM JOHN MARTIN, OF CALIFORNIA
CARLOS MEDINA, OF NEW YORK
LINDA R. MEEHAN, OF CALIFORNIA
ALEXANDER J. MEEROVICH, OF PENNSYLVANIA
JAMES P. MERZ, OF MARYLAND
ANDREW THOMAS SHERMA MILLER, OF VIRGINIA
KEITH W. MINES, OF COLORADO
GREGG MORROW, OF RHODE ISLAND
JOHN B. MOWER, OF VIRGINIA
EDWARD R. MUNSON, OF UTAH
ROBERT S. NEEDHAM, OF WISCONSIN
STACY R. NICHOLS, OF TENNESSEE
JOSEPH L. NOVAK, OF PENNSYLVANIA
BRADLEY E. OFFUTT, OF VIRGINIA
SANDRA D. OFFUTT, OF VIRGINIA
MARK A. PATRICK, OF NEW MEXICO
MARY CATHERINE PHEE, OF THE DISTRICT OF COLUMBIA
THEODORE STUART PIERCE, OF NEW YORK
THOMAS METZGER RAMSEY, OF NEW YORK
RUSLAN O. RASIAK, OF IOWA
WHITNEY A. REITZ, OF PENNSYLVANIA
SCOTT REMINGTON, OF ARIZONA
STEPHEN J. RIEDEL, OF VIRGINIA
SONJA KAY RIX, OF NEBRASKA
TIMOTHY P. ROCHE, OF VIRGINIA
DANIEL ALAN ROCHMAN, OF NEBRASKA
DAVID C. ROSENBERG, II, OF VIRGINIA
NICOLE DAYAN ROTHSTEIN, OF CALIFORNIA
MARIE-CLAUDE SADDY, OF VIRGINIA
DAVID A. SAHLIN, OF VIRGINIA
BARBARA B. SCHNEIDER, OF VIRGINIA
DAVID K. SCHNEIDER, OF VIRGINIA
PAMELA RENEE SCHNEIDER, OF VIRGINIA
MARK C. SCHROEDER, OF MARYLAND
KRISTINA LUISE SCOTT, OF IOWA
JO DELL SHIELDS, OF PENNSYLVANIA
RONALD N. SLIMP, II, OF VIRGINIA
SANDRA SPRINGER, OF FLORIDA
JOHN CHRISTOPHER STEVENS, OF THE DISTRICT OF COLUMBIA
LEILANI STRAW, OF NEW YORK
MONA K. SUTPHEN, OF WISCONSIN
ALAINA B. TEPLITZ, OF MISSOURI
JAMES PAUL THEIS, OF SOUTH DAKOTA
MICHAEL D. THOMAS, OF MASSACHUSETTS
ROBERT TOMKIN, OF NEW JERSEY
LESLIE MEREDITH TSOU, OF VIRGINIA
THOMAS L. VAJDA, OF TENNESSEE
JEFFREY DAVID WALLACE, OF VIRGINIA
DEIRDRE M. WARNER, OF PENNSYLVANIA
DAVID WILLIAMS, OF VIRGINIA
SARAH J. WRIGHT, OF VIRGINIA
JOSEPH M. YOUNG, OF THE DISTRICT OF COLUMBIA

SECRETARIES OF THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

JOHN BREIDENSTINE, OF PENNSYLVANIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED, EFFECTIVE APRIL 7, 1991:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

CAROL K. STOCKER, OF ILLINOIS